

**STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION**

ILLINOIS COMMERCE COMMISSION)	
On Its Own Motion)	
)	00-0700
ILLINOIS BELL TELEPHONE COMPANY)	
)	
Investigation Into Tariff Providing)	
Unbundled Local switching With)	
Shared Transport)	

**INITIAL BRIEF OF THE STAFF
OF THE ILLINOIS COMMERCE COMMISSION
(PUBLIC VERSION)**

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August 30, 2001

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The Staff of the Illinois Commerce Commission ("the Staff"), by and through its counsel, and pursuant to Section 200.800 of the Commission's Rules of Practice (83 Ill. Adm. Code 200.800), respectfully submits its Initial Brief in the above-captioned matter.

I. PROCEDURAL HISTORY

On September 23, 1999, the Commission approved Ameritech and SBC's Joint Petition for Approval of Merger. See Order, ICC Docket No. 98-0555 (September 23, 1999) (hereafter "Merger Order"). The Commission conditioned its approval of the merger upon, *inter alia*, Ameritech filing tariffs for the provision of unbundled local switching and permanent shared transport (hereafter, collectively, "ULS-ST") within six months of the merger closing date. Merger Order at 242. In compliance with this provision of the *Merger Order*, Ameritech filed such tariff on August 24, 2000. Initiating Order at 1, ICC Docket No. 00-0700, (November 1, 2000). On October 9, 2000, the tariff went into effect. Id. On October 19, 2000, the Staff filed TRM 833, in which it summarized certain CLEC objections to the tariff, and in which it recommended that the Commission investigate, but not suspend, the tariff. Id. On November 1, 2000, the Commission ordered that the tariff be investigated, and initiated this docket. Id. at 3-4. The Commission directed that the investigation be convened:

pursuant to Section 9-250 of the Public Utilities Act to determine whether the rates and service provided by Illinois Bell Telephone Company pursuant to those tariff pages enumerated in the Appendix to this order are just and reasonable and in compliance with law. Specifically, the Commission directs that evidence be presented on the following issues:

A) Whether the costs and rates comply with prior Commission and FCC Orders;

B) Whether Ameritech's restriction of the shared transport offering to local exchange traffic is appropriate and should be maintained, specifically, whether shared transport should be available for use by CLECs in transporting their intraLATA toll traffic; and

C) Whether Ameritech's restriction on ordering new and additional (i.e. second line) loops in combination with unbundled switching and shared transport is appropriate and should be maintained.

Initiating Order at 3.

Several interested parties filed petitions to intervene in the proceeding, including AT&T Communications of Illinois, Inc. (hereafter "AT&T"), WorldCom, Inc. (hereafter "WorldCom" or "MCI"), Sprint Communications L.P. (hereafter "Sprint"), Global Crossing Local Services, Inc. (hereafter "Global"), Z-Tel Communications, Inc. (hereafter "Z-Tel"), CoreComm Illinois, Inc. (hereafter "CoreComm"), the Association for Local Telecommunications Services (hereafter "ALTS"), the Illinois Public Telecommunications Association (hereafter "IPTA"), Data Net Systems L.P. (hereafter "Data Net"), and the PACE Coalition (hereafter "PACE"). Thereafter, the Administrative Law Judge set a schedule, the parties filed testimony, and on June 27 and 28, 2001, hearings were held and evidence taken. *See, generally*, Transcripts. On June 28, the Administrative Law Judge marked the matter "Heard and Taken" and set a schedule for filing of briefs in the proceeding. Tr. at 434.

II. A HISTORY OF AMERITECH'S OBLIGATION TO PROVIDE SHARED TRANSPORT

The history of shared transport in Illinois is a deeply disappointing one, despite the best efforts of, and through no fault of, the Commission. At every level, the Commission, acting in a manner always consistent with, and often in anticipation of, federal law, has ordered Ameritech to provide unbundled local switching and shared transport. Ameritech, however, has consistently frustrated the Commission's order, generally through delay that borders on lawlessness. The facts are as follows.

A. The Wholesale Order

In June 1996, the Commission granted LDDS's petition seeking a ruling requiring Ameritech to provide "total wholesale network service" under Section 13-505.5 of the Public Utilities Act; this ruling required Ameritech to provide the local loop, unbundled switching, and "inter office transport" or "local service platform". *Whole Sale Order* at 63-66, 77; AT&T Communications of Illinois, Inc: Petition for a total local exchange wholesale service tariff from Illinois Bell Telephone Company d/b/a Ameritech Illinois and Central Telephone Company pursuant to Section 13-505.5 of the Illinois Public Utilities Act. ICC Docket Nos. 95-0458/0531 (Consol.) (June 26, 1996) *Whole Sale Order* at 63-66 (hereafter "Wholesale Order"). The Commission determined at that time that its Whole Sale Order was consistent with the then-newly enacted federal Telecommunications Act of 1996. *Id.* at 63-4. The Commission elected to defer pricing and compliance issues to another docket, which was to be convened to determine whether

Ameritech had complied with the Wholesale Order. See Wholesale Order at 66 and 77.

B. The FCC First Report and Order

Shortly thereafter, the FCC, in its *First Report and Order*, imposed requirements upon local exchange carriers that were virtually identical to those the Commission imposed in the *Wholesale Order*. *First Report and Order*, ¶¶ 377-396, 410-427, 439-451, In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, FCC No. 96-365 (August 8, 1996) (hereafter “First Report and Order”). Specifically, it directed ILECs to provide unbundled loops, switching, and shared transport. *Id.* In doing so, the FCC relied heavily upon this Commission’s comments in setting its policies on local switching and transport. Staff Ex. 1.0 at 6.

C. The Iowa Utilities Board Case

Several ILECs took an appeal from the application of the *First Report and Order*, and the rules it promulgated, see 47 CFR 51.315, and prevailed before the federal District Court of Appeals for the Eighth Circuit, which, *inter alia*, vacated Section 51.315(b) (requiring ILECs to combine for CLECs all elements they normally combine), reasoning as follows:

While the Act requires incumbent LECs to provide elements in a manner that enables the competing carriers to combine them, unlike the [Federal Communications] Commission, we do not believe that this language can be read to levy a duty on the incumbent LECs to do the actual combining of elements.

Iowa Utilities Board v. FCC, 120 F.3d 753, 813 (8th Cir. 1997); *rev'd in part and remanded sub nom.*, 525 US 366 (1998).

The Supreme Court, however, found the Eighth Circuit's analysis less than compelling. In AT&T Corp. v. Iowa Utilities Board, 525 US 366 (1998), the Court reinstated Rule 315(b), observing that:

[While] Rule 315(b) could allow entrants access to an entire preassembled network [, i]n the absence of [the rule] ... incumbents could impose wasteful costs on even those carriers who requested less than the whole network. It is well within the bounds of the reasonable for the [Federal Communications] Commission to opt in favor of ensuring against an anticompetitive practice.

AT&T Corp. v. Iowa Utilities Board, 525 US at 395.

Other aspects of the *Iowa Utilities Board* case have found their way back to the Supreme Court. See Iowa Utilities Board v. FCC, -- US --; 121 S. Ct. 878; 148 L. Ed. 2d 788 (2001) (Supreme Court grants certiorari to consider several UNE and TELRIC issues). However, Rule 315(b) remains in effect.

D. The TELRIC Order

The Commission undertook to implement its *Wholesale Order*, and, accordingly sought to establish pricing for various unbundled elements Ameritech was required to offer, and further addressed the provision of shared transport. *Second Interim Order* at 104-07, 136; Investigation into forward looking cost studies and rates of Ameritech Illinois for interconnection, network elements, transport and termination of traffic, ICC Docket Nos. 96-0486 / 96-0569 (consol.) (February 17, 1998)(hereafter "TELRIC Order"). In the *Second Interim Order* the

Commission directed Ameritech to file tariffs for shared transport within 90 days. Wholesale Order at 77.

The Commission's goal, however, was frustrated. Ameritech's tariff filing for "shared transport" proposed that CLECs purchase dedicated transport facilities which CLECs could share with each other, but did not provide for, or allow, CLECs to "share" transport facilities with Ameritech. TELRIC Order at 83 (Lexis 255). In addition, Ameritech declined to offer cost studies relating to, or rates for, shared transport, in defiance of the *Wholesale Order*. See TELRIC Order at 89 (Lexis 253) (Commission notes that, since "Ameritech Illinois has been quite zealous in resisting the notion of providing common transport[,] no rates or costs, other than those presented by AT&T, were of record).

The Commission found, in its *TELRIC Order* "that Ameritech Illinois' position on shared transport is inconsistent with the FCC's Order and the common understanding of shared transport, and would raise yet another barrier to entry by new competitors." TELRIC Order at 105. Because Ameritech did not provide cost studies for shared transport, the Commission ordered an interim rate for shared transport to be set at \$0.0134 per minute, and also set an interim rate for an unbundled local switching basic port at a flat rate of \$5.01. Id. The Commission set these interim prices for shared transport with the expectation that final prices would be established in a subsequent docket. Id.

The Commission initiated ICC Docket No. 98-0396 ("the TELRIC II Docket") to establish permanent rates for non-recurring services, and to investigate compliance with the Commission's TELRIC Order. Subsequently, the

schedule of the TELRIC II Docket was suspended as a result of the SBC/Ameritech merger proceeding.

E. The FCC's Third Order on Reconsideration

During the proceedings leading to the TELRIC Order, the FCC issued its *Third Order on Reconsideration and Further Notice of Proposed Rulemaking* in CC Docket No. 96-98, addressing matters relating to shared transport. See *Third Order on Reconsideration and Further Notice of Proposed Rulemaking, In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, FCC 97-295, (August 18, 1997)(hereafter "Third Order on Reconsideration"). The FCC's interpretation of what shared transport constitutes was the same as that of this Commission's, as articulated in the TELRIC Order. Third Order on Reconsideration, ¶22. Specifically, the FCC concurred with this Commission that the terms "shared transport" and "common transport" are synonymous. Id. The FCC also rejected Ameritech's arguments that by definition, network elements must be partly or wholly dedicated to a customer. Id., ¶41. The FCC also "reject[ed] Ameritech and Bell South's contention that, because WorldCom and other requesting carriers seek access to an element –shared transport—that cannot be effectively disassociated from another element – local switching, the requesting carriers are in fact seeking access to a bundled service rather than to transport as a network element unbundled from switching." Id., ¶42. The FCC also reaffirmed its decision that CLECs utilizing shared transport are entitled to originating and terminating

access. In the TELRIC Order proceedings, Ameritech agreed to comply with this directive, as the Commission noted in its *TELRIC Order*:

In its Brief on Exceptions Ameritech Illinois indicated its intention to abide by the FCC's Third Order on Reconsideration's finding on access charges, although it intends to challenge the legality of that Order.

TELRIC Order at 115, n.12

F. The Merger Order

On July 24, 1998, Ameritech and SBC Communications filed a joint motion for approval of their reorganization under Section 7-204 of the Public Utilities Act. See Joint Application of SBC and Ameritech, ICC Docket No. 98-0555. Ameritech's provision of shared transport continued to be an issue in those proceedings. Ameritech claimed that it did not provide unbundled local switching and local transport because 1) shared transport could not be unbundled from local switching, see Merger Order at 174, and 2) measurement and recording problems with respect to the identity of originating carriers sending traffic through common trunk ports and with respect to terminating call data. See Merger Order at 175, 251 ("Ameritech Illinois states that it does not have the ability to measure terminating [call] detail[.]").

In an effort to accelerate the deployment of shared transport and the UNE Platform, the Commission ordered Ameritech to offer an interim version of unbundled local switching and shared transport, similar or identical to that offered in Texas by SBC. Reconsideration Order, ICC Docket No. 98-0555, ¶ 8 (November 15, 1999). The Commission also required Ameritech to implement permanent shared transport, utilizing Advanced Intelligent Network (AIN)

capabilities, thereby allowing CLECs to bill for access. Merger Order at 176, 252. It ordered that this permanent offering be implemented by August 8, 2000. Id. Ameritech asserts that the tariff filing at issue in this proceeding complies with these directives.

G. The UNE Remand Order

On November 5, 1999, the FCC released its UNE Remand Order. *Third Report and Order and Fourth Further Notice of Proposed Rulemaking*, ¶ 321 *et seq.*, In the Matter of Implementation of the Local Competition Provisions of the Telecommunication Act of 1996, FCC No. 98-238 (November 5, 1999)(hereafter “UNE Remand Order”). In the UNE Remand Order, the FCC reiterated its conclusion that ILECs are required to provide unbundled local switching and shared transport. UNE Remand Order, ¶ 321 *et seq.*

H. The TELRIC II Proceeding

With the approval of the Ameritech / SBC merger, the Commission again took up the issue of whether Ameritech had complied with the TELRIC Order. On June 7, 2001, the Administrative Law Judge entered a Proposed Order that reaffirmed Ameritech’s obligation to provide shared transport. *See, generally, HEPO*, ICC Docket No. 98-0396.

The HEPO finds Ameritech’s filing deficient in numerous areas. Specifically, Ameritech, apparently believing that the Commission has a deficient institutional memory, advanced a proposal that would permit it to retain, rather than turn over to the ULS purchaser, access revenues, pending a so-called

“rough justice” true-up. HEPO at 66. The HEPO finds that this violates the *Wholesale Order*. HEPO at 66-7. The HEPO also notes that Ameritech’s filing violates the *Merger Order*, inasmuch as it proposes a rate for ULS-IST that is 15 times higher than the rate that the *Merger Order* allows. Id. The HEPO further finds that Ameritech’s proposal violates the TELRIC Order, in that it attempts to collect usage sensitive rates for ULS, when the Commission has determined that Ameritech’s switch costs are incurred on a flat basis. Id. The HEPO further finds that Ameritech has failed to submit tariff language that makes it easy for a CLEC to ascertain what nonrecurring charges it will be required to pay to order and obtain ULS-IST. HEPO at 73-4. In addition, in the *TELRIC Order*, the Commission directed Ameritech Illinois to provide, in its compliance filing, information addressing the following five compliance items:

- a. A description of the extent to which the separate elements of each combination are combined in Ameritech Illinois’ own network for its own use.
- b. The separate unbundled element prices that Ameritech Illinois proposes would apply to a purchase of the combination.
- c. A description of any additional activities, and costs of those activities, required to provide each unbundled element combination, where Ameritech seeks to recover the cost of those activities.
- d. An identification of each nonrecurring charge that Ameritech proposes would, or may, apply to the purchase of the unique combination; including an identification of all nonrecurring charges which Ameritech Illinois proposes would or may apply to the situation where end users’ existing service is converted “as-is” to a new entrant.

- e. A description of the basis for calculation of each nonrecurring charge Ameritech Illinois proposes would apply.

TELRIC Order at 125.

The HEPO found that Ameritech had not complied with this requirement. HEPO at 93.

Thus, the history of shared transport in Illinois can be summarized as follows: in the *Wholesale Order*, in 1996, the Commission ordered Ameritech to provide shared transport and unbundled local switching, finding that it was in the public interest and would further competition. The Telecommunications Act of 1996, the FCC's *First Report and Order*, *Third Order on Reconsideration*, and *UNE Remand Order*, the *Merger Orders* entered by the FCC and by this Commission, the *Wholesale Order*, the *TELRIC Order*, and the HEPO in the *TELRIC II* proceeding all require Ameritech to provide shared transport and unbundled switched transport. During that time, the Eighth Circuit and the US Supreme Court have reviewed the FCC's rules. Ameritech's obligation to provide shared transport, has, in all cases, been sustained at every level. Ameritech has yet to provide shared transport in compliance with these requirements.

III.. APPLICABLE LAW / REGULATIONS

Section 9-250 of the Public Utilities Act, 220 ILCS 5/9-250 provides that:

Whenever the Commission, after a hearing had upon its own motion or upon complaint, shall find that the rates or other charges, or classifications, or any of them, demanded, observed, charged or collected by any public utility for any service or product or commodity, or in connection therewith, or that the rules, regulations, contracts, or practices or any of them, affecting such rates or other charges, or classifications, or any of them, are unjust, unreasonable, discriminatory or preferential, or in any way in violation of any provisions of law, or that such rates or other

charges or classifications are insufficient, the Commission shall determine the just, reasonable or sufficient rates or other charges, classifications, rules, regulations, contracts or practices to be thereafter observed and in force, and shall fix the same by order as hereinafter provided.

The Commission shall have power, upon a hearing, had upon its own motion or upon complaint, to investigate a single rate or other charge, classification, rule, regulation, contract or practice, or any number thereof, or the entire schedule or schedules of rates or other charges, classifications, rules, regulations, contracts and practices, or any thereof of any public utility, and to establish new rates or other charges, classifications, rules, regulations, contracts or practices or schedule or schedules, in lieu thereof.

Section 13-801(d) of the Public Utilities Act, 220 ILCS 5/13-801(d), provides, in relevant part, that:

Network elements. The incumbent local exchange carrier shall provide to any requesting telecommunications carrier, for the provision of an existing or a new telecommunications service, nondiscriminatory access to network elements on any unbundled or bundled basis, as requested, at any technically feasible point on just, reasonable, and nondiscriminatory rates, terms, and conditions.

(1) An incumbent local exchange carrier shall provide unbundled network elements in a manner that allows requesting telecommunications carriers to combine those network elements to provide a telecommunications service.

(2) An incumbent local exchange carrier shall not separate network elements that are currently combined, except at the explicit direction of the requesting carrier.

(3) Upon request, an incumbent local exchange carrier shall combine any sequence of unbundled network elements that it ordinarily combines for itself, including but not limited to, unbundled network elements identified in The Draft of the Proposed Ameritech Illinois 271 Amendment (I2A) found in Schedule SJA-4 attached to Exhibit 3.1 filed by Illinois Bell Telephone Company on or about March 28, 2001 with the Illinois Commerce Commission under Illinois Commerce Commission Docket Number 00-0700. The Commission shall determine those network elements the incumbent local exchange carrier ordinarily combines for it if there is a dispute between the incumbent local exchange carrier and the requesting

telecommunications carrier under this subdivision of this Section of this Act.

The incumbent local exchange carrier shall be entitled to recover from the requesting telecommunications carrier any just and reasonable special construction costs incurred in combining such unbundled network elements (i) if such costs are not already included in the established price of providing the network elements, (ii) if the incumbent local exchange carrier charges such costs to its retail telecommunications end users, and (iii) if fully disclosed in advance to the requesting telecommunications carrier. The Commission shall determine whether the incumbent local exchange carrier is entitled to any special construction costs if there is a dispute between the incumbent local exchange carrier and the requesting telecommunications carrier under this subdivision of this Section of this Act.

(4) A telecommunications carrier may use a network elements platform consisting solely of combined network elements of the incumbent local exchange carrier to provide end to end telecommunications service for the provision of existing and new local exchange, interexchange that includes local, local toll, and intraLATA toll, and exchange access telecommunications services within the LATA to its end users or payphone service providers without the requesting telecommunications carrier's provision or use of any other facilities or functionalities.

Section 13-801(g) of the Public Utilities Act, 220 ILCS 5/13-801(g), provides, in relevant part, that:

Interconnection, collocation, network elements, and operations support systems shall be provided by the incumbent local exchange carrier to requesting telecommunications carriers at cost based rates. The immediate implementation and provisioning of interconnection, collocation, network elements, and operations support systems shall not be delayed due to any lack of determination by the Commission as to the cost based rates. When cost based rates have not been established, within 30 days after the filing of a petition for the setting of interim rates, or after the Commission's own motion, the Commission shall provide for interim rates that shall remain in full force and effect until the cost based rate determination is made, or the interim rate is modified, by the Commission.

Section 51.315 of title 47 of the Code of Federal Regulations, entitled “Combination of unbundled network elements”, provides in relevant part, that:

(a) An incumbent LEC shall provide unbundled network elements in a manner that allows requesting telecommunications carriers to combine such network elements in order to provide a telecommunications service.

(b) Except upon request, an incumbent LEC shall not separate requested network elements that the incumbent LEC currently combines.

VI. SUMMARY OF STAFF’S POSITION

A. Shared and Common Costs

In summary, it is Staff’s position that the 34.55% factor proposed by Ameritech is unreasonable. Staff’s proposed shared and common cost factor of 24.29% was not refuted by any party to this proceeding. A shared and common cost factor of 24.29% should be used for purposes of this case.

B. Total Element Long-Run Incremental Costs (TELRIC):

Staff and Ameritech disagree with the calculation of the per-line TELRIC and whether ARPSM or ARPSM outputs should or should not be used in this docket. Staff believes that ARPSM outputs should not be used in the TELRIC analysis. Staff maintains that Ameritech’s approach to calculate the per-line TELRIC is flawed and should be rejected. The calculation of the TELRIC of switching elements should be conducted by applying the market prices to the structure of the entire network.

C. CCS and UNE Rate Structures:

In summary, Ameritech has failed to establish a valid theoretical foundation to support its preferred rate structure for CCS investment costs

(i.e., MOU charge) and it also has failed to comprehend and meet Staff's challenge to provide evidence to support its position. Furthermore, Staff believes the one-tiered flat rate is the best approach to recover CCS investment cost when one-tiered-flat entails no cross-subsidy. Therefore, Staff strongly recommends a one-tiered-flat for the recovery of CCS investment costs.

D. Transport Rate

Ameritech proposes two alternatives (Alternative #1 and Alternative #2) for ULS-ST charges, both of which recommend a two-tiered pricing scheme, to be precise, ULS Shared Transport combined with Unbundled Local Switching. Staff selects Alternative #2 as the most beneficial pricing scheme because Alternative #1 will only benefit a CLEC whose customer usage, in total, does not exceed 507.25 MOU per month. As a result, Staff recommends this Commission to establish ULS-ST rates as shown below in "Corrected ULS-ST Rates Proposed by Staff."

E. OS/DA Custom Routing Prices

With respect to OS/DA custom routing prices, Staff makes the following three recommendations: First, the Company should not include the disconnection fee in the non-recurring charge because it is clearly a future event that should not be applied at the time the service is connected. Second, because the data provided by the Company is not based on verifiable and sustainable data, Staff recommends that

development cost for service logic be adjusted downward. Third, Staff recommends that the adjusted development cost be allocated among all existing switches in all 5 states. Accordingly, Staff recommends that the Commission accept its revised NRC rate of \$69.47 for the OS/DA UNE.

F. Restrictions on Use of Shared Transport

In this proceeding, Ameritech proposes tariff provisions that place substantial limitations upon the use of shared transport by CLECs. Specifically, it proposes limitations that would, if adopted, prevent CLECs from using shared transport to provide intraLATA toll service. None of their arguments should be considered. As an initial matter, it is well established that a CLEC purchasing a UNE, including shared transport, is entitled to the full features and functionalities of that UNE. Staff Ex. 1.0 at 17. Additionally, Ameritech's proposal would, if adopted, require CLEC intraLATA traffic to be routed in a manner different from Ameritech's. Finally, the Commission should consider the actions of sister-state Commissions with respect to this issue. The Commission should, perhaps, give careful thought to Ameritech's unwillingness to provide shared transport for intraLATA toll service in Illinois.

G. Combining Elements

Staff believes that Ameritech is required to combine elements not currently combined in its network. Ameritech advances no policy or economic arguments in support of its position. In fact, Ameritech's only argument is that federal law does not require it to combine elements that

are not currently combined for CLECs. See, *generally*, Ameritech Ex. 3.1. This argument is defective and should be rejected by this Commission.

H. Other Issues

Staff believes the Commission should require Ameritech to provide transiting. It is clear that the Commission need not consider Ameritech's claim that it is under no obligation to provide transiting. Both the Commission and the FCC have clearly directed it to do so. Moreover, the Commission should not adopt Ameritech's Draft Illinois Section 271 interconnection agreement amendment. In such amendment, Ameritech offers less than it is required by state law to offer, and accordingly the Commission cannot approve the amendment. Finally, Staff recommends the Commission bring Ameritech to book with respect to UNE-P and ULS-ST by imposing a tariff that incorporates the requirements of the various Orders and rules that Ameritech has, to date, ignored.

V. ARGUMENT

A. The costs and rates proposed by Ameritech do not, in significant ways, comply with prior Commission and FCC Orders.

1. Shared and Common Cost

a. The shared and common cost factor used by Ameritech is unreasonably high.

Ameritech calculated the amount of shared and common costs included in the rate of each element by multiplying the TELRIC of each element by a shared

and common cost factor of ___*%¹, which Ameritech contends resulted from freezing the extended TELRIC calculation and shared and common cost pools established in ICC Docket 96-0486/0569. Ameritech Ex. 2.0, at 10. In that Order, the Commission noted that on average Ameritech Illinois' Shared and Common Cost Factor was 29%. Order at 38. The Commission also ordered other specific adjustments discussed in Staff witness Marshall's direct testimony which reduced Ameritech's Shared and Common Costs. ICC Docket 96-0486/0569, at. 35-54 and Staff Exhibit 2.0, at. 5-7. Absent any Ameritech support of the ___*% factor other than the Order in ICC Docket 96-0486/0569, it appears that the Shared and Common Cost Factor used by Mr. Palmer is unreasonably high and that an appropriate factor based solely on that Order is less than 29%. Staff Ex. 6.0, at. 3.

In addition, there is other evidence that shows the factor utilized by Mr. Palmer is unreasonably high. Other states in the Ameritech region have recently investigated Ameritech's calculation of its Shared and Common Costs Factor and determined that a much lower Shared and Common Cost Factor is appropriate. For example, Michigan found a Shared and Common Cost Factor of ___*% and Indiana found a Shared and Common Cost Factor of ___*% to be appropriate. The rate in Wisconsin is currently under investigation and the rate in Ohio remains unchanged since its 1996 TELRIC case. See Attachment A, Ameritech's Response to Staff DR CLG 3.05.

¹ Note: the “*” hereafter denotes the proprietary information.

The Shared and Common Costs factors of other Ameritech states are relevant because many common costs are allocated among the Ameritech regional companies. The Commission recognized this in ICC Docket 96-0486 when it ordered that costs must be allocated to Illinois based on the extended TELRICs for each state in the Ameritech region re-calculated using Illinois approved TELRIC assumptions. Order, ICC Docket 96-0486/0569, p. 54. Similarly, in ICC Docket 97-0601/0602 the Commission established a cap on Shared and Common Costs associated with switched services of 28.86% for both Ameritech and GTE. Ameritech agreed that the allocation of its shared and common costs, which produced the cap, was reasonable. Order, ICC Docket 97-0601/0602, at. 51. These comparisons demonstrate that Mr. Palmer's proposed yet unsupported Shared and Common Costs Factor of ____*% is unreasonably high and should not be utilized in this docket. ICC Staff Ex. 6.0, at 3-4.

b. The Shared and Common Cost Factor utilized by Ameritech is not in compliance with previous Illinois Commerce Commission Orders.

Staff believes that Ameritech's use of a single cumulative factor for both shared and common costs is not in compliance with the Commission's TELRIC Order in ICC Docket 96-0486/0569. The Commission's TELRIC Order finds:

"The methodology used for allocating shared and common costs should be consistent for all network elements. Ameritech Illinois should allocate shared and common costs to unbundled loops based on specific extended TELRIC for each rate zone, A, B, and C, thus developing total costs for each element

appropriately, i.e., based on the costs related to the specific element.

We note Dr. Ankum's observation that Ameritech Illinois allocates its shared and common costs across its five state territories using extended TELRICS. This means the larger the Extended TELRIC, the larger the proportionate share of shared and common costs allocated to a given state. This will render the amount of shared and common costs allocated to Illinois dependent on the TELRICs approved in other jurisdictions. We will adopt Ms. Yow's suggestion to require that for purposes of allocation to Illinois, Ameritech Illinois shall use extended TELRICs based on the assumptions approved in Illinois.

Ameritech Illinois is directed to recalculate its rates based on the above adjustments."

Order at 53. Clearly the original TELRIC Order requires the extended TELRIC methodology.

In addition, the Commission's Order in ICC Docket 96-0486/0569 distinguishes shared costs from common costs as follows:

"As Ameritech Illinois witness Broadhurst explained, Andersen developed a methodology for analyzing and attributing shared and common costs that it believed was consistent with the FCC Order. Andersen defined "shared costs" to be those costs incurred to provide two or more UNEs (including collocation and local transport and termination services) but which are unrelated to products and services that are not UNEs. It defined "common costs" to be those costs that are incurred to operate the business as a whole and are not directly associated with any individual UNEs, products or services or any groups thereof. Mr. Broadhurst states further that shared costs are synonymous with the term joint costs used by the FCC. (Ameritech Ex. 4.0, p. 3)". Order at 35.

"The Commission concludes that one aspect of Ameritech Illinois' allocation of common costs is unacceptable. The 1995 Ameritech Annual Report

identifies a series of non-regulated, retail business activities under the title of “New Ventures.” AT&T Cross Ex. 4. Under Ameritech’s allocation system, “New Ventures” improperly receives no allocation of common costs. New Ventures are “non-core” activities. Excluding New Ventures in the allocation process decreased the ratio of “non-core” to “core” activities. If New Ventures were added back, the core/non-core allocator would decrease the amount of common costs eventually allocated to unbundled network elements.

The exclusion of New Ventures means that none of the President of Ameritech’s salary, or the real estate costs, or the costs of the Ameritech Institute are allocated to New Ventures, even though all unbundled network elements will bear part of these expenses. Ameritech Illinois is directed to revise its calculations accordingly.”

Order at 51-52. Accordingly, shared costs must be assigned to one or more UNEs, while common costs are to be spread over all of Ameritech’s business operations, including non-regulated activities and new ventures. Ameritech’s use of a single combined factor for both shared costs and common costs results in the improper assignment of common costs to UNEs. Staff Ex. 6.0, at 11.

Use of the extended TELRIC methodology is significant to Ameritech’s allocation of shared and common costs. Staff witness Marshall selected as an example to demonstrate the significance of using the extended TELRIC [or extended long run service incremental cost (“LRSIC”)] a proprietary exhibit in ICC Dockets 97-0601 and 97-0602, which is Attachment B to Staff Exhibit 6.0. In that docket, which dealt with access charges, Ameritech also attempted to use an overall cumulative shared and common costs factor of ____*% rather than the Commission approved extended LRSIC methodology. The exhibit demonstrates

that the total shared and common costs for switched services was only 28.8% using the extended LRSIC methodology while the total shared and common costs for Billing and Collection were a whopping ____*% using the extended LRSIC methodology. These significant differences in the factors for different services demonstrate the importance of proper application of the Commission's TELRIC Order to the allocation of shared and common costs. The Commission appropriately rejected Ameritech's use of the overall cumulative shared and common costs factor in ICC Dockets 97-0601 and 97-0602 and it should similarly reject it here. Staff Ex. 6.0, at 11-12.

Ameritech provided only very limited current demand data related to loops that is not sufficient to calculate the extended TELRIC methodology previously adopted by the Commission for the assignment of shared and common costs. See Staff Ex. 6.0, Attachment C, Ameritech Response to DR CLG-3.06. However, the response clearly demonstrates the need for updated demand data because the figures for year 2000 "in-services quantities" of Loops (demand) significantly exceed 1997-forecasted demand for loops in all rate zones. The extended TELRIC methodology discussed above cannot be properly applied without complete demand data for both Illinois and the other Ameritech states. Staff Ex. 6.0, at 12.

c. A more updated study of AI's shared and common costs factor is available.

In compliance with the Commission's Order in ICC Docket 98-0555, Ameritech provided a revised study of Shared and Common Costs to

Commission Staff in July of 2000. That study derives a shared and common cost factor of ____*% based upon 1998 data. Staff Ex. 2.0 at 3. The Commission has not approved the Illinois 1998 Shared and Common Study. Staff's brief in ICC Docket 98-0396 recommends that shared and common costs be investigated in this docket. Staff Reply Brief, at 2-3.

d. Ameritech did not address the specific concerns raised in Staff's direct testimony.

In ICC Docket 96-0486, the Commission adopted the following specific adjustments and directed Ameritech to recalculate its costs in accordance with the Commission's findings.

1. Three of fifteen employees were improperly assigned to UNEs based on Ameritech's organizational chart.
2. Salaries and Benefits associated with employees assigned to wireless, mutual compensation, and long distance services were not allowed to be recovered in UNEs.
3. Other employee related expenses such as computer costs and space related costs were adjusted.
4. Software expenses were required to be amortized over 2 years.
5. Costs of new computers and software were allocated between shared costs and the common cost pool.
6. Corporate Strategy costs and Public Policy costs were

removed from the shared cost pool and placed in the common cost pool.

7. Charitable contributions and the costs of sporting events, skyboxes and White House dinners were disallowed entirely.
8. Retail related expenses were removed from the common cost pool. These included costs of printing customer bills, providing retail customer account information, computer costs associated with billing, correction and special handling of bills, and remittance of Ameritech customer bills.
9. Common costs were required to be allocated to "New Ventures".
10. Shared and common costs must be allocated based upon the extended TELRIC (unit cost times demand) for each element.
11. Costs must be allocated to Illinois based on the extended TELRICs for each state re-calculated using Illinois approved TELRIC assumptions.

ICC Docket 96-0486, at 35-54. Staff requested that Ameritech explain in its rebuttal testimony how each of these adjustments is reflected in both its 1998 Shared and Common Cost Study and the ____*% shared and common cost factor utilized by Mr. Palmer. Staff Ex. 2.0, at 7-9.

Staff witness Marshall reviewed the Illinois 1998 Shared and Common Cost Study submitted to Staff in July 2000, and identified the following concerns:

1. The study is not based on forward-looking budgeted data as was adopted by the Commission in ICC Docket 96-0486. The use of historical data with numerous adjustments is prone to manipulation and should be considered less reliable than truly forward-looking data. 2. The total shared and common costs factor is not equal to the sum of its parts due to Ameritech's use of a "rolling denominator". Ameritech should provide its complete rationale for the use of this method and confirm whether this methodology is consistent with the study used in ICC Docket 96-0486.

3. From Ameritech's "Documentation and User Manual" it is not clear whether the TELRIC based denominator includes costs, which are excluded from the numerator because they would not be incurred in a network built today.

4. The sources of data and calculations used in Schedule 7 "Cost Savings and Inflation" are unclear. Appropriate references and supporting work papers should be provided. Use of inflation factors should not be necessary if forward-looking costs are used.

5. Calculation of the Annual Charge Factor includes substitutions of factors for obsolete equipment.

6. The amounts included for merger related costs and savings should be updated to reflect current estimates that can be derived from the total projected by merger integration team reports or the Barrington Wellesley Group Confidential Final Report. Current estimates of merger related net savings are approximately 80% greater than the estimates used in the 1998 study.

7. The Net Present Value (NPV) calculations are inconsistent, apparently using 4 years for expense savings and 3 years for capital savings. Staff believes that use of forward looking data will negate the need for any NPV calculations and that the forward looking going level or run rate net expense and capital savings should be used. In any case, no NPV calculation for years prior to 2002 is appropriate.

8. Development of the current cost/book cost ratio is not sufficiently explained in either the study or the Documentation and User Manual.

9. It appears that the Illinois 1998 Shared and Common Cost Study contains mathematical errors. For example, line 10 of Schedule 4, Analog Electronic Switching amounts do not sum to the amount shown as adjusted study year investment and the substitute annual

charge factor utilized contains a depreciation cost for an account Staff believes to be fully depreciated.

10. Ameritech should incorporate current demand data into its study of shared and common costs. Staff has not yet received a reply to its data request for demand data and will address issues related to demand in its rebuttal testimony.

Ms. Marshall recommended that Ameritech Illinois address each of these concerns in its rebuttal testimony and when revising its shared and common cost study to a forward-looking study. Ms. Marshall noted that some issues identified above might also impact other cost models used in this case. For example, forward looking costs reflecting correct values for merger related costs and savings (including procurement related savings) and correction or elimination of NPV calculations of those savings should be consistently applied to each of the models. Staff Ex. 2.0 at 9. Ameritech did not address any of the specific concerns that Staff identified. Ameritech witness Palmer addressed only whether this case is an appropriate forum to investigate that study. Ameritech Ex. 2.1, at 52.

e. This case is an appropriate forum to investigate
Ameritech's 1998 Shared and Common Cost Study.

Staff's brief in ICC Docket 98-0396 recommends that shared and common costs be investigated in this docket. Staff Reply Brief at 2-3. Staff witness Marshall recommended that the Commission investigate Ameritech's shared and common cost study, as well as its other cost studies, in this docket and recommended that Ameritech present a current study of shared and common costs for use in this docket.. Staff Ex. 2.0, at 3. There is no procedure for

approving or ordering revisions of any of AI's cost studies outside of a docketed case.

Moreover, the issues identified in the Commission's Order initiating this proceeding are sufficiently broad to include a review of Ameritech's Shared and Common Costs utilized in the tariff under investigation. The Order initiating this docket states, "an investigation is initiated into whether the rates and services for unbundled local switching with shared transport provided by Illinois Bell Telephone Company pursuant to the tariff pages are just and reasonable and in compliance with the provisions of law...". Order, ICC Docket 00-0700, at 2. Ameritech has the burden of proving that its shared and common costs factor utilized in the development of this tariff is reasonable. That burden cannot be met by putting off consideration of Ameritech's cost models to some uncertain future date. Staff Ex. 6.0 at 13

As Mr. Palmer stated, Issue No. 1 is "whether the costs and rates comply with prior Commission and FCC Orders". Ameritech Ex. 2.1 at 52-53. As noted in Ms. Marshall's testimony identified above, Ameritech has not demonstrated that its Shared and Common Costs Factor complies with the Commission's Order in ICC Docket 96-0486. The ____*% factor used is clearly in excess of the maximum cap for Ameritech Shared and Common Costs established in ICC Docket 97-0601/0602. Since compliance with prior Commission Orders has not been demonstrated, a review of Ameritech's Shared and Common Costs Study is appropriate. Staff Ex. 6.0 at 13.

In ICC Docket 98-0555, the Commission Ordered a mechanism for sharing merger related savings with retail and wholesale customers through updated cost studies and an allocation of savings between IXCs and end users. Order ICC Docket 98-0555 at 140. We are now in the third calendar year since the merger and Ameritech has avoided passing any merger related savings (which are encompassed in the shared and common costs study) to purchasers of UNEs. Staff believes that the tariff prices for all of Ameritech's UNEs should be adjusted when a current, forward-looking study of shared and common costs is completed. This docket provides an appropriate forum for a Commission conclusion regarding the shared and common costs study. Reductions of shared and common costs ordered in this docket should affect the prices of all UNEs. The Commission should not allow Ameritech to further delay the passing through of merger savings or other cost decreases to all purchasers of UNEs. Staff Ex. 6.0 at 14.

The cost studies submitted in compliance with the SBC/Ameritech merger are based on 1998 data. They were not forward looking at the time they were submitted and they are not forward looking now. Current, forward looking cost studies should be submitted in support of any tariff change. In the past, Staff has not devoted the resources to review cost studies outside of a docketed case because they find that they are frequently unable to affect changes in a company's cost studies absent a specific Commission Order. Therefore, Staff looks at revised cost studies when they are used in a tariff filing which can result in a specific Commission Order. Staff Ex. 6.0 at 15.

Ameritech witness Palmer testified that each of the revised TELRIC cost studies filed in compliance with the SBC/Ameritech merger should be investigated. Ameritech Ex. 2.1 at 54. If the Commission wishes each of Ameritech's cost studies to be reviewed absent a tariff filing, Staff recommends that the Order in this docket initiate a proceeding to address all Ameritech revised cost studies. The Order should require Ameritech to submit current, forward-looking cost studies for review. Staff Ex. 6.0 at 15.

f. Staff identified significant flaws in Ameritech's 1998 Shared and Common Costs Study.

It is not possible for Staff to simply adjust the Illinois 1998 Shared and Common Costs Study because some of the concerns included in Ms. Marshall's direct testimony require information that is known only to Ameritech. Other concerns such as the use of net present value ("NPV") calculations and current estimates of merger related costs and savings should be able to be adjusted by Staff. However, when Staff attempted to do sensitivity analyses using the model provided by Ameritech it was unable to obtain anticipated results. In one scenario, Staff's adjustments had no impact on the factor that indicates that Staff's adjustments were not accepted by the model. In another scenario, significantly reduced shared and common expenses produced the illogical result of increasing rather than reducing the factor. Therefore, Staff has concluded that it cannot perform sensitivity analyses using the model and procedures manual provided by Ameritech. Staff Ex. 6.0 at 5.

Staff Witness Marshall determined some of the reasons why Ameritech's Illinois 1998 Shared and Common Costs Model produced such flawed results. She determined that Ameritech's revised Shared and Common Costs model failed to recognize any merger related net savings. This failure occurred because the model utilized an inappropriate column that contains no merger related net savings from Ameritech's supporting schedules. This flaw causes the model to disregard any adjustment of the amount shown for net merger related expense savings, since no merger related expense savings at all are reflected in the study. The same flaw caused the illogical result of increasing the shared and common cost factor by both ignoring changes to merger related net expense savings in the numerator and recognizing changes to merger related net savings reflected in the denominator. Staff Ex. 6.0 at 6.

Ms. Marshall concluded that this flaw in the 1998 Shared and Common Costs Model is significant. Ameritech's failure to detect this problem prior to submitting the Illinois 1998 Shared and Common Costs Study led Ms. Marshall to two conclusions. First, the program does not contain appropriate checks and balances to assure logical results. It is relatively simple for a competent computer programmer to include error messages to be displayed when an illogical or opposite result occurs. It is also common for a computer program to be designed to include a warning message when the user attempts changes that will not be recognized by the program. In this case, Staff's attempted changes were performed in accordance with the operating manual provided by Ameritech. The manual does not state that the program will not recognize such changes.

Therefore, Ms. Marshall concluded that Ameritech's Shared and Common Cost model is defective. Staff Ex. 6.0 at 6-7.

Ameritech's failure to detect this significant flaw also led Ms. Marshall to conclude that the model was not appropriately tested prior to its use. If Ameritech had performed sensitivity analyses it should have obtained the same illogical results as were obtained by Staff. Investigation of the illogical results would have allowed Ameritech to identify this flaw and correct the computational errors in the Illinois 1998 Shared and Common Costs Study prior to its submission to the Commission. For these reasons, Ms. Marshall concluded that the Commission should rely upon neither the model nor the Illinois 1998 Shared and Common Costs Study produced by this model. Staff Ex. 6.0 at 7.

g. Staff proposed specific adjustments to Ameritech's Illinois 1998 Shared and Common Costs Study.

Having identified this significant flaw in Ameritech's Illinois 1998 Shared and Common Costs Study, Staff proposed specific adjustments to Ameritech's calculation to correct this error. Exhibit 6.0, Schedule 1, page 1 of 3 corrects only the mathematical errors in Ameritech's study. Correction of the errors, while still utilizing all Ameritech assumptions, reduces the cumulative shared and common costs factor for wholesale services from ____*% to ____*%. Staff Ex. 6.0 at 7-8.

The information shown on pages 2 and 3 of Exhibit 6.0, Schedule 1 parallels the calculation shown on page 1 of this schedule using alternative assumptions. In Staff's opinion, Ameritech's use of a net present value of merger related savings is not forward looking in this third year of the study. The effect of

removing the net present value assumption to reflect year 2001 values (referred to as going level values in the study) is shown on Exhibit 6.0, Schedule 1, page 2 of 3. This calculation results in a cumulative shared and common costs factor of ____*%. Staff Ex. 6.0 at 8.

Finally, Exhibit 6.0, Schedule 1, page 3 of 3 calculates the result when current estimates of net merger related savings are utilized. At least 96% of the current estimate of net merger related savings are expected to be realized by 2002. Staff believes the use of year 2002 data where available is appropriately forward looking and is most comparable to the preliminary budgeted data used in the original TELRIC case, ICC Docket 96-0486. The resulting cumulative shared and common costs factor is ____*%. Staff Ex. 6.0 at 8.

Staff witness Marshall recommended use of the cumulative shared and common costs factor of ____*% for use in this case. Staff Ex. 6.0 at 8. As noted above, Staff does not possess the necessary data to correct all of the flaws in Ameritech's Illinois 1998 Shared and Common Costs Study. Staff believes that Ameritech's proposed use of a single, cumulative factor for the assignment of both shared and common costs is not in compliance with the Commission's Order in ICC Docket 96-0486. For these reasons, the ____*% factor should only be used on an interim basis until a forward-looking study that complies with prior Commission Orders can be completed. Staff anticipates that a properly prepared shared and common cost study will produce factors averaging less than ____*% because Ameritech's operating expenses have declined since 1998 while the demand for its services has increased. Staff Ex. 6.0 at 9.

h. The Commission should not rely upon the results of Ameritech's Illinois 2001 Shared and Common Costs Study.

During the hearings in this case, Ameritech identified a more recent Illinois 2001 Shared and Common Costs Study. Staff Ex. 1P. The 2001 study had been filed with the Chief Clerk of the Commission in April, 2000, but was not provided to Staff at that time or in response to Staff Data Request JRM 1.01. Ameritech objected to the data request on the grounds that this study was irrelevant. See Ameritech Response to Staff Data Request JRM 1.01. and TR 368-370.

Staff's analysis throughout this case relates to the Illinois 1998 Shared and Common Costs Study. Staff Ex. 2P. that was identified by both title and factor produced in its direct testimony. A comparison of Staff Exhibits 1P and 2P reveals that the run date of the 1998 study is February 2000 and the run date of the 2001 study is March 2000; both studies are based on 1998 ARMIS data; and the 2001 study appears to recognize some merger related costs and savings while the 1998 study does not. The adjustment to recognize some merger costs and savings in the 2001 study is almost entirely offset by an increase in the annual inflation factor of approximately 60%. TR 394-5.

The 2001 study was not provided prior to hearings and was not the basis for any pre-filed testimony in this case. Parties to the case had no opportunity to analyze the 2001 study. If the 2001 study had been presented earlier in the case, Staff would have addressed the impropriety of utilizing inflation factors in a forward-looking cost study in a more comprehensive manner. See Staff Ex. 2.0 at 7-8, item 4. Ameritech itself considered the 2001 Study irrelevant to this

proceeding and refused to provide it. For all the above reasons, the Commission should not rely upon the Illinois 2001 Shared and Common Costs Study in this case.

2. *The Total Element Long-Run Incremental Costs (TELRIC)*

The 1996 Telecommunication Act mandates competition in the local exchange market through Unbundled Network Elements (UNEs), among others. The key step in promoting competition through UNEs is to ensure UNE rates are set at the “right” levels. If the UNE rates are set too high, efficient competitors are kept out of the market, and if the rates are set too low, inefficient competitors will enter. Social inefficiency results in both cases. To ensure the “right” UNE rate structures, a two-step process is required: 1) the calculation of the Total Element Long Run Incremental Cost (TELRIC) for each component involved, and 2) to select the UNE rate structure to ensure an efficient and equitable division of the cost (TELRIC) among all carriers that share the Incumbent’s network (i.e., the UNE provider and subscribers).

The First Report and Order requires that UNE rates be based on the Total Element Long Run Incremental Cost (hereafter TELRIC) of the Unbundled Network Elements. The first step in a cost analysis for the purpose of UNE rate setting is to compute the TELRIC for each investment component involved.² When there is a single market price for the investment component, the TELRIC of this network component is, in practice, derived by applying the single market

² A Unbundled Network Element (UNE) may have different components. For example, the Unbundled Local Switching (ULS) includes, line ports, trunk ports, CCS, and other components. Therefore, the calculation of the TELRIC of a UNE, in practice, reduces to the calculation of the TELRIC of each component.

price to the entire network of this component — i.e., the TELRIC is the single market price multiplied by units of this component in the network, and consequently, the per-line TELRIC equals the single market price.³ For instance, assume that the single market price for switching equipment is \$50 per line and that there are 6,000,000 lines in the entire network. Then the TELRIC of the switching equipment is three hundred millions of dollars (\$50 x 6,000,000) and the per-line TELRIC is \$50.

Unfortunately, single market prices do not always exist in a marketplace. For example, in the switching equipment market the vendors adopt a two-tiered pricing structure. As a result, there are two market prices: replacement and growth prices. The unit price that Ameritech pays for switching investment (e.g., line port, trunk port, RTU) depends on whether it is for replacing or expanding the existing switches. How to calculate the TELRIC when there are two market prices is at the center of dispute among Ameritech, the Interveners and Staff.

It is important to note that the disagreement between Ameritech and Staff does not lie with the weighting factors used in ARPSM. Rather it lies with the calculation of the per-line TELRIC and whether ARPSM or ARPSM outputs should or should not be used in this docket (or in any switching cost study). Therefore, a valid discussion can not be properly conducted in the narrow

³ Strictly speaking, the TELRIC is the single market price multiplied by units of the component in the network and then multiplied by Annual Cost Factor (ACF). Yet, because the ACF is not addressed in this docket, the “investment cost before ACF” (which is the single market price multiplied by units of the component in the case of a single market price) is treated as the TELRIC in Staff’s policy discussion. This makes perfect sense, as introducing ACF into the discussion adds no extra insight to the issues but rather a distraction.

context of ARPSM only and it must be done in the broad context of the TELRIC analysis.

Staff's Calculation of the Per-line TELRIC

The calculation of the TELRIC of switching elements should be conducted by applying the market prices to the structure of the entire network. The Staff's calculation of the per-line TELRICs of switching elements (Line Port, Trunk Port and Right-To-Use) can be conceptually divided into three steps:

- 1) Estimate replacement and growth lines in the network,
- 2) Calculate the TELRIC by applying the replacement/growth prices to the replacement/growth lines in the network, and
- 3) Calculate the unit cost or per-line TELRIC of the investment component by dividing the total TELRIC by the total number of access lines in the network.

In the calculation of the per-line TELRIC for Ready Revenue (hereafter RR), the RR fees quoted in the vendors' contracts should be applied to all access lines in the network, which include the existing access lines prior to these vendors' contracts and the access lines purchased under these vendors' contracts.

When there is a single market price, the TELRIC of the Unbundled Network Element is, in practice, derived by applying the single market price to the entire network of the network element, and the per-line TELRIC thus coincides with the single market price. The Staff's approach to calculate the TELRIC associated with two market prices (replacement/growth) is analogous to the calculation of TELRIC associated with a single market price. While functionally identical from the viewpoint of the end-user, the replacement and growth lines differ from the viewpoint of Ameritech in that Ameritech has to pay different prices for a piece of switching equipment depending on whether it is to replace or expand the existing system. In the calculation of per-line TELRIC of

switching equipment, one may treat replacement and growth lines as two different types of lines, which have different prices. The TELRIC is simply derived by applying the replacement and growth prices to replacement and growth lines in the network, respectively, and the per-line TELRIC is then derived by dividing the total TELRIC by the total number of access lines in the network.⁴

Ameritech's criticisms of Staff's approach for the calculation of the per-line TELRIC seem to stem largely from Ameritech witnesses' misreading of Staff's testimony. First, Ameritech asserts that, like the Intervener's witness Dr. Ankum, Staff has manipulated the ARPSM inputs, which Ameritech attributes to Staff's "misunderstanding" of "the economic theory underlying ARPSM." AI Ex. 2.2 at 32-33. This assertion, which is offensive and completely untrue, stems from Ameritech's misreading of Staff's testimony. Staff did not manipulate the ARPSM input data nor is Staff's understanding of "the economic theory underlying ARPSM" based upon this so-called manipulation of ARPSM input data. In fact, Staff did not even use ARPSM because ARPSM outputs should not be used in the TELRIC analysis.

Second, Ameritech criticizes Staff for calculating the "forward-looking market prices" using "analog lines replaced with digital lines" prior to the contracts. AI Ex. 2.2 at 32. Again, Ameritech's criticism is not well founded. Staff has never even attempted to determine "a forward-looking market price"

⁴ This is similar to treating the replacement lines and growth lines as two separate sub-networks of the entire network (or a partition of the network). The TELRIC of the entire network is the sum of the TELRICs for the two sub-networks. The calculation of the TELRIC of each sub-network is identical to the calculation of the TELRIC associated with one market price. That is, the TELRIC of replacement (growth) line sub-network is the replacement (growth) price multiplied by the replacement (growth) lines in the sub-network.

because a single “forward-looking market price” does not exist under the two-tiered pricing adopted by the switch vendors. The only prices that Ameritech faces (or has to pay) are the replacement and growth prices.

Third, Ameritech asserts that Staff’s work papers, submitted in response to Ameritech’s DR request, “are incomplete, use undefined terms, and appear to be unnecessarily complicated.” AI Ex 2.2at 36. Yet, Ameritech has provided no examples of Staff’s “incompleteness” or use of “undefined terms.” In addition, it seems ironic that Ameritech would describe Staff’s calculations as “unnecessarily complicated” since Ameritech’s ARPSM work papers alone have 60 pages of printout while Staff’s work papers have fewer than 10 pages. Ameritech’s argument is a red herring. The Company appears to endorse the tactic of “the best defense is a good offense”. Instead of directly refuting Staff’s position, they obfuscate the issues with allegations of manipulation and deceptiveness.

Fourth, Ameritech asserts that Staff has provided no support or reasoning behind the numerical values for the parameters.” AI. Ex. 2.2. This assertion seems to be attributed to Ameritech’s failure to read Staff’s testimony and work papers. Contrary to Ameritech’s assertion, Staff has provided sound support for the numerical values selected:

The average error of projection is –1.5% and the average of absolute error of projection is 3.9%. Therefore, the projection with the selected parameter values has a very high level of “goodness of fit.” Staff Ex. 7.0 at 22.

The ultimate goal in designing a projection is to produce a projection that is close to the actual data (e.g., digital switch penetration in this docket). Projections are thus judged or selected based on the “goodness of fit,” which measures how well the projection fits the actual data. While many numerical values could be used, not all could produce such a high level of “goodness of fit” as the ones chosen by Staff.

Fifth, Ameritech asserts that Staff’s per-line TELRIC concept fails to account for other cost components (e.g., billing). AI Ex. 2.2 at 33-34. Again, Ameritech’s criticism seems to be a result of Ameritech’s failure to read Staff’s rebuttal testimony. Staff Ex. 7.0 at 2. As noted in Footnote 2 of Staff Ex. 7.0, the Unbundled Local Switching (ULS) consists of several components and includes (among others) line ports, trunk ports, and Centi Call Seconds (hereafter CCS). The calculation of the TELRIC for the Unbundled Local Switching element, in practice, reduces to the calculation of the TELRIC of each individual component. The per-line TELRIC or TELRIC used by Staff refers to the per-line TELRIC or TELRIC of the switching component (e.g., trunk port, CCS, line port, ... etc.), not necessarily the entire Unbundled Local Switching element. Staff Ex. 7.0 at 2. Thus, Ameritech’s criticism that Staff has failed to include other investment components (such as billing) in its per-line TELRIC is misplaced.

Sixth, Ameritech also asserts that Staff’s per-line TELRIC concept fails to account for the Annual Cost Factor (ACF) and thus Staff misunderstood the TELRIC methodology. AI Ex. 2.2 at 33-34. Ameritech’s assertion is based on Ameritech’s confusion between policy discussion and the actual calculation of the

per-line TELRIC. When cost personnel actually calculate the per-line TELRIC, they will have to apply the Annual Cost Factor (hereafter ACF) to the “investment costs,”⁵ which is what Staff has done in its calculation of the per-line TELRIC. See, Staff Ex. 7.0. For example, in calculating the TELRIC for the case of a single market price, the cost personnel will multiply the single market price by units of the component in the network and then multiply by the ACF. For a given ACF, whether the per-line TELRIC is correctly calculated solely depends on whether the per-line “investment costs before ACF” is correctly calculated. As the ACF is not addressed or disputed in this docket, it makes perfect sense to leave the ACF out of the policy discussion because introducing ACF or new concepts into the discussion adds no additional insight to the issues but rather distractions. Staff maintains that the use of per-line TELRIC for the “investment cost before ACF” is perfectly acceptable in the policy discussion. Moreover, Staff has consistently treated the “investment cost before ACF” as the TELRIC in all the policy discussions in this docket. Therefore, Ameritech’s criticism that because Staff did not account for ACF in its policy discussion, Staff has misunderstood the TELRIC methodology, is ill founded.

While Ameritech’s criticisms of Staff’s approach seem to largely reflect Ameritech’s misreading of Staff’s testimony, Ameritech has not yet provided any kind of valid support for its own calculation of the per-line TELRIC. Ameritech’s

⁵ “Investment cost” refers to the “cost” before the Annual Cost Factor is applied. For example, when there is a single market price for the line port, the “investment cost” refers to the single market price multiplied by the total number of access lines in the network. And the per-line “investment cost” is the “investment cost” divided by the total number of access lines in the network, which coincides with the single market price.

calculation of the per-line TELRIC (for line port, trunk port, CCS, and Right-To-Use) can be described in four steps:

- 1) Calculate the Single Price Equivalents (SPEs) for Ameritech's "marginal purchase" (purchase under the contracts) ---- ARPSM,
- 2) Use the SPEs as the "single forward-looking market prices" that Ameritech is expected to pay,
- 3) Calculate the TELRIC of the switching element by applying the "single market prices" (i.e., the SPEs) to the entire network, and
- 4) Calculate the per-line TELRIC by dividing the total TELRIC by the total number of access lines in the network --- the per-line TELRICs coincide with the single price equivalents.

Clearly, there can be no direct comparison between Staff's and Ameritech's calculations of the per-line TELRIC. First, Ameritech's weighting factors are directly used in the calculation of the single price equivalent, and in contrast, Staff's weighting factors are directly used in the calculation of the per-line TELRIC. Second, Staff does not disagree with ARPSM or the weighting factors used in ARPSM per se. But Staff does take the position that ARPSM or ARPSM outputs should not be used in the TELRIC analysis.

Staff maintains that Ameritech's approach to calculate the per-line TELRIC is flawed and should be rejected for the following reasons. First, contrary to Ameritech's belief or claim, single market prices do not exist for switching equipment under the vendors' contracts. The only prices that Ameritech is expected to pay are the two prices quoted in the contracts — i.e., replacement and growth prices. Ameritech is wrong in attempting to construct a "single market price" that does not even exist and it is also wrong in asserting that the

single price equivalent is the single market price that Ameritech is expected to pay. See, AI Ex. 2.1 at 10; AI Ex. 2.2 at 36; AI Ex 4.1, Schedule 3 at 7; AI Ex. 4.1, Schedule 3 at 18; AI Ex. 4.1, Schedule 3 at 19. Ironically, Ameritech's pizza parlor example used to support Ameritech's approach only serves to discredit Ameritech's approach because it actually shows that single price equivalent is contingent on the purchase and it is not the single market price. AI Ex 2.2 at 35-36. Moreover, contrary to Ameritech witness' intention, the pizza parlor example illustrates that there may not even exist a single market price when the sellers adopt a pricing structure that is not "linear pricing."

Furthermore, by using the single price equivalent in place of the single market price, Ameritech has assumed that vendors would adjust the two market prices to maintain the single price equivalent at a certain level when there is a change in the line-mix of Ameritech's purchase — i.e., the single price equivalent would be the same regardless of the line-mix of Ameritech's purchase. While the validity of Ameritech's calculation of the per-line TELRIC critically depends on the validity of this claim, Ameritech has not provided any support for this claim.

There is no such language in the vendors' contracts that would support this, as confirmed by Ameritech's witness Palmer on cross-examination. Tr. 18.

Moreover, Ameritech has not been able to provide an economic theory to support it either and, in fact, such claim does not hold (at least in this docket).

In sum, the key problem with Ameritech's approach is not ARPSM or the weighting factors in ARPSM per se. Rather, it is the use of ARPSM or ARPSM outputs. The key argument used by Ameritech to support the use of ARPSM

outputs in the TELRIC analysis is that the single price equivalent is the “single market price”. Yet, as pointed out above, this argument is totally wrong, and the ARPSM outputs should not be used in the calculation of the per-line TELRIC. Moreover, Ameritech’s methodology for the calculation of the per-line TELRIC (for line-port, trunk port, CCS and Right-to-Use) is not only conceptually and theoretically flawed but the application of it has serious consequences on the rate structure for switching services. Specifically, Ameritech’s flawed methodology substantially overstates the per-line TELRIC and the rates for switching services. Therefore, ARPSM should not be used for determining Ameritech’s cost for its switch or its switching services.

In Ameritech’s Surrebuttal Testimony, Ameritech witness Aron indicated that it is Staff’s belief that single price equivalent is the single price that would prevail if the vendor were to adopt one-tiered pricing. AI Ex. 4.1 at 18 & 19-22. Given the vital importance of this “belief” or claim for Ameritech’s methodology, it is necessary to clarify the ownership of this belief: this belief does not belong to Staff, rather it belongs to Ameritech. In fact, not only does Staff not share this belief, but also Staff has devoted a significant part of its rebuttal testimony to refute this incorrect belief. See, Staff Ex. 7.0. The ownership of this belief is clearly demonstrated in Ameritech’s testimonies:

In doing so, it [ARPSM] generates the single price that the vendor would charge, were it to replace its two-tiered pricing structure with a single per-line price. AI Ex. 2.1 at 10-12.
(Illustration and emphasis added)

ARPSM generates a forward-looking, market based price ...
.... AI Ex. 2.1 at 11.

[W]hen the forward-looking price of switching generated by ARPSM, [AI Ex 2.1 at 20](#).

It is irrelevant that there are other two-tiered pricing structures that the parlor did not choose, the SPE [single price equivalent] is the market price. AI Ex. 2.2 at 36. (Illustration and emphasis added)

The TELRIC price [Single Price Equivalent] is the price that would prevail if the vendors could have credibly negotiated with SBC for all replacement lines, all new lines and all growth lines to be installed at one price, ... AI Exhibit 4.1, Schedule 3 at 7. (Illustration added)

This [SPE] is the price that vendors would offer if they were constrained to offer a single price for both replacement and growth lines, AI Ex 4.1, Schedule 3, at 18. (Illustration and emphasis added)

The single price equivalent is, therefore, the price that would be expected to prevail if the buyer were to negotiate a contract in which all lines were replacement lines. AI Ex. 4.1, Schedule 3, at 19.

Clearly, it is Ameritech witnesses' belief, not Staff's, that the single price equivalent generated by ARPSM is the single forward-looking market price. Yet, Ameritech witness Aron has mistakenly credited this belief to Staff. AI Ex. 4.1 at 18.

Finally, Staff also disagrees with Ameritech on the calculation of TELRIC for the Revenue Ready component (hereafter RR). The fundamental difference between Staff and Ameritech is whether the per-line RR fees quoted in the vendors' contracts should be applied to all the access lines in the network or merely to the lines in Ameritech's marginal purchase (i.e., purchase under the vendors' contracts). By the terms of the contracts, the RR fees are applicable to all access lines in the network, including the existing lines and the lines in the

marginal purchase. Thus, there is no legitimate basis to limit the application of the RR fees quoted in the vendors' contracts only to the lines in Ameritech's marginal purchase. The per-line TELRICs for RR for each year under the contracts are the RR fees quoted in the vendors' contracts, and they vary over time. The issue here is not the calculation of the per-line TELRICs for RR but the calculation of the average of the per-line TELRICs over time. Ameritech is wrong in limiting its application of the RR fees quoted in the contracts to the lines in its marginal purchase, and by doing so, Ameritech is ultimately calculating the "average of the RR fees over time" for the marginal purchase, not the average of the per-line TELRIC for the entire network.

3 *CCS and UNE Rate Structures*

This issue involves the recovery of CCS related investment costs and the resulting UNE rate structures. Specifically, the issue is whether the CCS related investment costs should be recovered via one-tiered or multi-tiered flat rate or per MOU rate structure.

CCS capacity or investment of a switch is based on the projected aggregate future peak time usage of the switch. The allocation of the CCS related investment costs among user groups — ULS and non-ULS port groups — should, therefore, be based on the contributions of each user-group to the total CCS requirement. Staff maintains that the appropriate approach to recover or allocate the CCS related investment costs should be contingent on the circumstances. Specifically,

- 1) Absence of evidence that the per-line CCS contribution to the total CCS requirement differ significantly across all user groups --- ULS and non-ULS port groups:

The CCS related investment costs should be recovered from or allocated among all user groups via a one-tiered flat rate.

- 2) Evidence that the per-line CCS contribution to the total CCS requirement differ significantly across all user groups --- ULS and non-ULS port groups:

The CCS related investment costs should be recovered from or allocated among all user-groups via three-tiered flat rates, the design of which is illustrated in Staff testimony. Staff Ex. 7.0 at 27-41.

Furthermore, Staff has challenged Ameritech in its rebuttal testimony to provide evidence that the per-line contribution to the total CCS requirement differs significantly across user groups — ULS and non-ULS port groups. Staff Ex. 7.0 at 27-28. However, to date, Ameritech has not yet provided any evidence to such a purpose. In view of Ameritech's total failure to provide evidence, Staff strongly recommends that: the CCS related investment costs be recovered from, or allocated among, different user groups via one-tiered flat rate charge. This one-tiered flat rate charge should be determined based on the per-line TELRIC of the CCS investment developed by Staff. Staff Ex. 7.0 at 24.

The resulting UNE rate structure for the Unbundled Local Switching has two parts: (1) flat rate, and (2) MOU charge. The flat rate component (named "port charge") recovers investment costs related to Line Port, CCS, RTU, RR, MDF/DSX (1/2), Intercept, Tel. Number, Directory, Report Processing and others.⁶ The MOU charge recovers costs related to measurement investment

⁶ For definition of these terms, see Ameritech's Unbundled Local Switching Cost Study, submitted in this docket.

and billing and Daily Usage Feed, etc.. The overall rate structure recommended is ⁷ ⁸:

<u>Unbundled Network</u> <u>Elements</u>	UNE Rate
<i>Non-recurring Charge</i>	
Custom Routing OS/DA via AIN	68.740000
<i>ULS Shared Transport</i>	
ULS Switch Usage per MOU	0.000187
ULS -ST Rec Comp per MOU	0.000187
ULS-ST SS7 Signaling-msg	0.000161
ULS-ST Blended Trans per MOU	0.000442
ULS-ST Common Trans per MOU	0.000315
ULS-ST Tandem Switching per MOU	0.000196
<i>Unbundled Local Switching</i>	
Basic Port	2.270000
Local Switching Usage per MOU	0.000258

As discussed in detail in Staff's rebuttal testimony Staff Ex. 7.0 at 27-41, there are three commonly used methods to recover investment costs of shared elements/facilities:

⁷ These rates have incorporated Staff witness Buckley's corrections and are slightly different from the UNE Rates presented in Staff Ex. 5.0.

⁸ Of course, both flat rate and MOU component of the rate structure include Share&Common.

- ◆ One-tiered flat rated: recommended by Staff for circumstances in which one-tiered flat rate entails NO cross subsidy.
- ◆ MOU rated: preferred by Ameritech
- ◆ Multi-tiered flat rated: recommended by Staff for circumstances in which one-tiered flat rate entails a cross-subsidy.

While usage linked approaches (MOU and multi-tiered flat) are among the possible approaches, this does not in any way imply that CCS investment costs are usage sensitive. In these circumstances, the usage is merely used as proxy for the per-line CCS contribution to the total CCS requirement and it is far from being a perfect proxy.

All three possible approaches have pros and cons. These pros and cons are summarized as follows:

One-tiered-Flat-Rated:

■ Advantage:

- No under- or over-recovery of CCS related investment costs.

■ Disadvantage:

- Entail cross-subsidy when the per-line CCS contribution differ significantly across user groups.

MOU-Rated:

■ Advantage:

- Might incur less cross-subsidy than under one-tiered flat rate structure when per line CCS contribution differ significantly across user groups.

■ Disadvantage:

- Potential under- or over-recovery of CCS related investment costs.
- Does not eliminate cross-subsidy problem when the per-line CCS contribution differs significantly across user groups.

Multi-Tiered-Flat-Rated:

■ Advantage:

- Might incur less cross-subsidy than under one-tiered flat when the per-line CCS contribution differs significantly across user groups.
- Potential under- or over-recovery of investment cost is less severe than under the MOU rate structure.

■ Disadvantage:

- Does not eliminate cross-subsidy problem when the per-line CCS contribution differ significantly across non-ULS and ULS port groups.
- Potential under- or over-recovery of investment costs.

Under- or over-recovery of investment costs can be a serious problem associated with usage-linked approaches. Under usage linked approaches, the UNE rates are derived based on some sort of “usage.” For example, under Ameritech’s preferred alternative, it is the engineered usage. The UNE rate derived is then applied to the actual usage (MOU) of this investment component. It is extremely unlikely that the total investment costs recovered or the total amount collected would coincide with the investment costs intended to be recovered. In other words, overall under-or over-recovery of investment costs is almost a certainty. So is the under- or over-recovery of investment costs from the ULS groups. Over-recovery from ULS port groups can impede efficient entry and thus competition. By the same token, under-recovery from ULS groups can harm competition in the long run because it discourages investments on the part of ULS providers.

When the per-line CCS contribution does not differ significantly across all user groups, the one-tiered flat rate charge is clearly the best choice. The one-tiered flat rate charge outperforms the two usage-linked rate structures (MOU and three-tiered flat rates) by all standards. It not only can equitably and

efficiently allocate the CCS investment costs among all user groups, but it can also avoid the potential under- or over-recovery of CCS investment costs. In contrast, the two usage-linked rate structures (MOU and multi-tiered flat) can at best offer an approximately equitable allocation of the investment costs. At the same time, they may cause under- or over-recovery of the CCS investment costs, which may have serious consequences given that no safeguards against under- or over-recovery of investment costs are in place.

When the one-tiered flat rate entails a cross-subsidy, a multi-tiered flat rate structure is preferred to the MOU rated structure for two reasons. First, the associated under- or over-recovery of investment costs are less severe than under the MOU rate structure. Second, it might mitigate some of the cross subsidy that occurs under the one-tiered flat rate structure.

Since Ameritech completely failed to meet Staff's challenge to provide evidence that the per-line CCS contribution differs significantly across user groups, policy recommendations must be based on the premise that the per-line CCS contribution does not differ significantly across user groups. Thus, Staff maintains that the one-tiered flat rate is the best approach to recover the CCS investment costs and that it is superior to both usage-linked approaches (MOU and multi-tiered flat) by all standards.

It is important to note that to prove that the per-line CCS contribution differs significantly across all user groups is no simple task. The difference, if any, in monthly per-line usage among user groups (ULS and non-ULS port group) is not sufficient evidence that the per-line CCS contribution differs

significantly across all user groups. Specifically, when the per-line monthly usage for the ULS port group is higher, the average ULS port may or may not contribute a larger portion to the total CCS requirement. As a result, the ULS port groups may or may not be subsidized by the non-ULS port groups under the one-tiered rate structure for CCS related investment.

The key argument provided by Ameritech in support of its MOU rate structure for CCS investment costs is that CCS related investment is usage sensitive. See, AI Ex. 2.1 & 2.2. Staff maintains that this argument is totally invalid. As discussed in Staff's rebuttal testimony, CCS investment is based on the projected future usage, and like all other investment costs, it is unaffected by the actual usage of this investment. See Staff Ex. 7.0 at 27-41. On cross-examination, even Ameritech witness Palmer conceded that CCS investment costs are not sensitive to the actual usage of the investment. Tr. 97. Therefore, Ameritech has totally failed to establish any valid theoretical foundation for its preferred option (i.e., MOU charge) for the recovery of CCS investment costs.

In response to Staff's challenge to provide evidence, Ameritech witness Palmer asserts in his rebuttal testimony:

I do not think it should be necessary or required to statistically demonstrate that usage across ports is not identical. Simple observation and common sense should provide all the evidence needed to conclude that some ports are used more than others, and usage across all ports are not statistically identical. AI Ex. 2.2 at 39.

Ameritech witness Palmer's assertion seems to be a result of misreading Staff's rebuttal testimony. See Staff Ex. 7.0 at 27-41. The usage pattern in Staff's

rebuttal testimony refers to the usage pattern for each user group, not for each individual port or customer. While each individual's usage pattern may differ, the usage patterns of different user groups may be identical. Ameritech witness Palmer is confusing the individual port's usage pattern with the usage pattern of a user-group.

In summary, Ameritech has failed to establish a valid theoretical foundation to support its preferred rate structure for CCS investment costs (i.e., MOU charge) and it also has failed to comprehend and meet Staff's challenge to provide evidence to support its position. In addition, as discussed earlier, the one-tiered flat rate is the best approach to recover CCS investment cost when one-tiered-flat entails no cross-subsidy. Therefore, Staff strongly recommends a one-tiered-flat for the recovery of CCS investment costs.

4. Transport Rate

In this proceeding, Ameritech proposes two alternatives for ULS-ST charges both of which recommend a two-tiered pricing scheme, namely, ULS Shared Transport combined with Unbundled Local Switching.

ULS Shared Transport	Alt#1	Alt#2
ULS Switch Usage per MOU	0.001009	0.000205
ULS-ST Rec Comp per MOU	0.001009	0.000205
ULS-ST SS7 Signaling per message	0.000176	0.000176
ULS-ST Blended Trans per MOU	0.000710	0.000710
ULS-ST Common Trans per MOU	0.000480	0.000480
ULS-ST Tandem Switching – MOU	0.000215	0.000215
Unbundled Local Switching		
Basic Port	\$ 1.94	\$ 3.16
Local Switching Usage per MOU	0.001087	0.000283
Ameritech Illinois, Ex. 2.1, Schedule WCP-6R.		

The principal difference between both alternatives is the categorization of the End Office Switching activity that accounts for a significant portion in the ULS Switch Usage and ULS-ST Reciprocal Compensation components. In Alternative #1, the End Office Switching was considered a usage sensitive activity and a MOU component was reflected in the first tier. However, in Alternative #2, the End Office Switching was not considered a usage sensitive activity and the activity was accounted for in the second tier as part of the Basic Port Price. For the following reasons, Staff selects Alternative #2 as the most beneficial pricing scheme and urges this Commission to accept Staff's recommendation and establish ULS-ST rates as shown below in "Corrected ULS-ST Rates Proposed by Staff."

Alternative #1 is not beneficial to any CLEC because it will only benefit a CLEC whose customer usage in total does not exceed 507.25 MOU per month. Staff performed a break-even analysis between the proposed alternatives and found a break-even point of 507.25 MOU per month (or approximately three 5.54 minute duration calls daily).⁹ Staff Ex. 8.0 at 7. This amount was determined by a break-even computation that included prices of the eight components in both tiers. Based on an average length of phone call at 5.54 minutes, 507.25 MOU equates to 91.56 calls per month or three calls per day. Id. At 6. Comparatively, Staff measured the second tier of Alternative #2 to the interim flat port rate of \$5.01 per month and found a resultant break-even point at approximately 6537.10 MOU (Ameritech Illinois, Ex. 2.2, Schedule WCP-2S) which is

⁹ A break-even point is a point at which two alternatives are equal in cost.

approximately 1198.98 messages a month. $(6537.10 / 5.54 = 1198.98)$ This indicates that carriers with monthly usage up to 6537.10 minutes will benefit from the Alternative #2 price structure.

With respect to Alternative #2, Staff made the following adjustments: First, Staff witness Marshall recommends a Shared and Common cost ratio of 0.242948. Staff Ex. 6.0 at 9. Second, Staff witness Liu recommends a Basic Port rate of \$2.27. Staff Ex. 7.0 at 29. In view of the above, Staff's recommendation for ULS-ST was as follows:

ULS Shared Transport

ULS Switch Usage per MOU	0.000190
ULS-ST Rec Comp per MOU	0.000190
ULS-ST SS7 Signaling per message	0.000164
ULS-ST Blended Trans per MOU	0.000449
ULS-ST Common Trans per MOU	0.000320
ULS-ST Tandem Switching – MOU	0.000200

Unbundled Local Switching

Basic Port	\$ 2.27
Local Switching Usage per MOU	0.000263

Staff Ex. 5.0 page 12.

Ameritech witness Palmer computed a break-even point of 1517 MOU between the two alternatives, titled, "Corrected Break –Even Analysis Alt#1 v. Alt.#2." Ameritech Illinois, Ex. 2,2, Schedule WCP-2s. Staff believes Mr. Palmer's analysis is improper and unacceptable. Although Mr. Palmer's analysis measured the break-even point of two Unbundled Local Switching rates, only the second tier of the two different rate structures was measured. Clearly, it is inappropriate to exclusively compare the second tiers given that the elements are materially different. Moreover, Mr. Palmer suggested that the Excel Spreadsheet prepared

by Staff contained a formula error. Staff notes that the error was identified and corrected. Tr. at 191. The resulting rates are as follows:

CORRECTED ULS-ST RATES AS PROPOSED BY STAFF

ULS Shared Transport

ULS Switch Usage per MOU	0.000189
ULS-ST Rec Comp per MOU	0.000189
ULS-ST SS7 Signaling per message	0.000162
ULS-ST Blended Trans per MOU	0.000446
ULS-ST Common Trans per MOU	0.000318
ULS-ST Tandem Switching – MOU	0.000198

Unbundled Local Switching

Basic Port	\$ 2.27
Local Switching Usage per MOU	0.000261

This comparison shows that the ULS-ST rates Staff proposes decrease only slightly as a result of the spreadsheet correction. By and large, two important changes were made to the Company's ULS-ST proposal (Alternative #2). First, Staff witness Marshall recommends a lower Shared and Common cost rate of 0.242948 in place of the 0.3455 proposed by Ameritech, and second, Staff witness Liu recommends a Basic Port rate of \$2.27 as opposed to \$3.16. Accordingly, Staff recommends the Commission accept and establish ULS-ST rates as shown above in "Corrected ULS-ST Rates Proposed by Staff."

5. OS/DA custom routing prices

Ameritech, by means of rebuttal testimony, submits the Nonrecurring cost study for custom routing of Operator Service (OS) or Directory Assistance (DA) via Advanced Intelligent Network (AIN) for Unbundled Local Switching with

Shared Transport. Ameritech Illinois, Ex. 2.1, schedule WCP-5. Essentially, Ameritech's submitted cost study consists of physical labor costs for routing plus development cost of service logic. The study is summarized as follows:

Custom routing of OS or DA via AIN for ULS-ST, per CLEC, per switch, per route		\$*_____
Connection	\$ * _____	
Disconnection	* _____	

Development Cost of Service Logic for OS/DA custom routing via AIN, per forecasted occurrence		
Development cost - AIN Service Logic/ULS-ST	\$100,000	
Percentage attributable to OS/DA	* %	
OS/DA Service Logic Development Cost	\$ * _____	
Forecasted Demand:		
3 CLECs x 507 central offices (in IL, MI. OH)x2 routes =	* _____	
Development Cost of Service Logic for OS/DA custom routing via AIN, per forecasted occurrence		\$*_____
TELRIC for OS or DA via AIN for ULS-ST		\$*_____

Shared and common factors are subsequently added to the TELRIC cost of \$*____, the sum of which produces a nonrecurring rate of \$*____ for custom routing per CLEC, per switch, per route. After thorough review, Staff remains confident in its position that Ameritech's Nonrecurring cost study is extremely subjective and believes the Commission should apply Staff's adjustments.

For example, the development cost for providing service was constructed by means of multiple, unsupported and flawed estimates. Carol Gruchala, Associate Director of Project Design – AIN for SBC, estimated the \$*____ development costs of AIN Service Logic for ULS-ST and the *____% attributable to the OS/DA function. Staff Ex. 8.0, Attachment 2. The only response the Company provided Staff for supporting the OS/DA development cost was an internal email correspondence from Ms. Gruchala responding to a request for

numbers to be used in the service costing effort. Ms. Gruchala stated: “ We do not track actual costs, so I can’t give you what the costs really were – the estimates should be close. I would estimate that approximately *___% of the costs were attributable to the OS/DA routing issues. Much of the logic, tables, and work amount centered around the OS/DA routing issues.” Staff Ex. 8.0, Attachment 1.

Similarly, Ameritech witness Palmer stated in his response to Staff’s data request KYB-1.04: “The development cost is shared by all five Ameritech states and does not include any cost associated with other SBC states.” (Staff’s data request KYB-1.04) In the cost study, demand was based on 507 Central Offices in three Ameritech states instead of 666 Central Offices in five states. Staff Ex. 8.0, Attachment 3. Moreover, the demand forecast was based on the number of Central Offices rather than total switches. Based on email reports provided and responses to Staff’s data request KYB-1.04, Staff determined that the costs included for this service were unsupported and are not sufficient proof of AIN development costs.

With respect to OS/DA routing non-recurring charges Staff makes the following three recommendations: First, the Company should not include the disconnection fee in the non-recurring charge. It is clearly a future event that should not be applied at the time the service is connected. It is more reasonable to include in the contract a disconnection charge due at the time of disconnection. Second, because the data provided by the Company is not based on verifiable and sustainable data, Staff recommends that development cost for

service logic be adjusted downward to \$*____. This is based on estimator profile information of Carol Gruchala, the AIN Associate Director, who mentioned that she had completed a certain program in the AIN project, under budget, saving Ameritech \$*____ (Staff Ex. 8.0, Attachment 2). In addition, it is not unusual for cost estimates to be off by as much as ____% in projects (Cross examination transcript at 215). Third, Staff recommends that the adjusted development cost, as quantified below, be allocated among all existing switches in all 5 states. Accordingly, the resulting OS/DA (TELRIC) Nonrecurring charge, at a minimum, should be \$*____. Staff Ex. 8.0, at 12. This cost consists of \$*____ for Connection Labor cost and \$*____ for the AIN service logic development cost. ($\$*____ \times *____\% / *____ = \$*____$, Demand units: 3 CLECs \times *____ switches \times 2 = *____). Last, the TELRIC cost is increased by 24.29% (shared and common costs) to result in a \$69.47 NRC for OS/DA service. Staff therefore recommends that the Commission accept its revised NRC rate of \$69.47 for the OS/DA UNE.

B. Restrictions on use of Shared Transport

In this proceeding, Ameritech proposes tariff provisions that place substantial limitations upon the use of shared transport by CLECs. Specifically, it proposes limitations that would, if adopted, prevent CLECs from using shared transport to provide intraLATA toll service. Ameritech Ex. 1.0 at 16-17. Ameritech appears to argue that the ability to route intraLATA toll calls is not included in the routing tables found in its switches, and is therefore not included within the FCC's definition of shared transport. Id. Ameritech asserts that the FCC's *Third Order on Reconsideration* supports this conclusion. Id. Likewise,

Ameritech contends that it is not required by the *UNE Remand Order* to unbundle shared transport for this purpose. *Id.* Finally, Ameritech observes that CLECs wishing to route intraLATA toll service over Ameritech's facilities can purchase custom routing from it. *Id.*

None of these arguments should be considered. As an initial matter, it is well established that a CLEC purchasing a UNE, including shared transport, is entitled to the full features and functionalities of that UNE. Staff Ex. 1.0 at 17. To the extent that Ameritech seeks to limit a CLEC's use of a UNE, the Commission should carefully scrutinize the proposed limitation. In this case, the limitation does not withstand any level of scrutiny, since Ameritech is *denying* CLECs the full functionalities of the shared transport UNE. Staff Ex. 1.0 at 17; AT&T/PACE Ex. 1.0 at 21-23.

Ameritech's assertion that the routing tables contained in its switches do not accommodate the routing of intraLATA toll service is controverted by the testimony of several witnesses to this proceeding. AT&T/PACE witness Gillan notes that Ameritech's analysis of this issue does not appear to take into account the existence of CLECs; rather it characterizes them, for purposes of routing, as interexchange carriers. AT&T/PACE Ex. 1.0 at 21-22, *citing* Ameritech Ex. 1.0 at 15-16; *see also* CoreComm Ex. No. 1.0 at 4. Mr. Gillan observes that IXCs, and not CLECs, require custom routing; CLECs could simply retain the Carrier Identification Code ("CIC" Code) that Ameritech uses to route traffic that originates on its network. AT&T/PACE Ex. 1.0 at 22-23; *see also* CoreComm Ex. 1.1 at 9.

In addition, by limiting the use of shared transport in the manner that it proposes, Ameritech violates the *Merger Order*. In that Order, the Commission directed Ameritech to deploy shared transport in Illinois under the same terms and conditions as SBC does in Texas. Merger Order at 257. In Texas, however, as the Commission in that state has directed, SBC provides shared transport of intraLATA traffic to CLECs without requiring them to resort to custom routing. Staff Ex. 1.0 at 18. In fact, the Texas Commission first required SBC to do so in November 1999, based upon interconnection terms SBC offered in May 1999 – four months *prior* to the Illinois Merger Order. Staff Ex. 5.0 at 10-11; AT&T/PACE Ex. 1.0 at 25. Accordingly, the Commission should not give credence to Ameritech’s argument.

Ameritech’s assertion that CLECs will not be impaired¹⁰, within the meaning of the *UNE Remand Order*, by being compelled to purchase custom routing, is also markedly deficient. First, there is no reason here to conduct an unbundling analysis based upon the “impair” standard. There can be no legitimate dispute that ILECs are required by law to unbundle shared transport, or that CLECs purchasing shared transport are entitled to all of its features and functionalities. Routing of intraLATA toll traffic is merely a functionality of ULS-ST, and consequently no unbundling analysis is called for, the element in question having already been unbundled.

Second, if the Commission determines that an unbundling analysis is called for, such an analysis reveals that CLECs will certainly be impaired if

¹⁰ Ameritech cannot, and does not, assert that the function of routing intraLATA toll traffic is proprietary, and thus the “necessary” standard need not be considered. UNE Remand Order,

Ameritech is not required to unbundle shared transport for CLEC intraLATA toll service. It is perfectly apparent that CLECs will incur additional – and, as has been seen, completely unnecessary – costs, if they are compelled to purchase custom routing for intraLATA toll calls. Staff Ex. 1.0 at 17; CoreComm Ex. 1.1 at 5-6; *see also* AT&T/PACE Ex. 1.0 at 20. Since, under the UNE Remand Order, whether a CLEC is impaired by the failure to unbundle an element is determined in significant part by whether the CLEC is required to incur material costs to obtain a substitute for the element, UNE Remand Order, ¶¶ 72, 74-83; the additional costs that CLECs must incur to obtain custom routing argue in favor of unbundling.

In addition, Ameritech's proposal would, if adopted, require CLEC intraLATA traffic to be routed in a manner different from Ameritech's. Staff Ex. 1.0 at 17. This could result in CLECs being unable to provide service of a quality comparable to Ameritech's. Staff Ex. 1.0 at 17; CoreComm Ex. 1.1 at 3-5. If the use of alternative elements compels a CLEC to provide service that is diminished in quality, this argues in favor of unbundling. UNE Remand Order, ¶96. Likewise, material operational or technical differences in functionality that arise from interconnecting alternative elements may also impair a CLEC's ability to provide service, which will, if found, support unbundling. UNE Remand Order, ¶99. It appears likely that Ameritech's proposal imposes a "material operational or technical difference" – as Ameritech appears to concede, when it proposes that CLECs can, as an alternative, purchase transport from other carriers. Ameritech Ex. 1.0 at 16-17. Whether or not Ameritech's proposal would result in diminished

¶31.

quality or material technical/operational differences, it is certainly discriminatory in the sense that it treats CLEC traffic – and CLEC customers – in a manner that is significantly different from, and apparently inferior to, Ameritech's. Id.

Finally, the Commission should consider the actions of sister-state Commissions with respect to this issue. As has been seen, the Texas Commission has directed SBC to provide shared transport of intraLATA toll traffic. In addition, the Michigan PSC has imposed the same requirement upon Ameritech in that state. CoreComm Ex. 1.1 at 6, 9. Moreover, SBC has committed to provide shared transport of intraLATA toll calls in Kansas and Oklahoma. AT&T/PACE Ex. 1.1 at 19. In other words, in states where it has sought Section 271 certification, SBC has been willing – and able, without apparent difficulty – to solve this “problem.” The Commission should, perhaps, give careful thought to Ameritech's unwillingness to provide shared transport for intraLATA toll service in Illinois.

C. Ameritech is required to combine elements not currently combined in its network

As an initial matter, it is important to note that Ameritech's “restriction” upon the ordering of ULS-ST by a CLEC which intends to use it to provision service to a new or additional line is not a “restriction” at all; it is in fact a blanket refusal to accept such orders or provision such service. Ameritech contends that the federal courts have vacated FCC rules requiring it to combine elements it does not currently combine in its network. See Iowa Utilities Board v. FCC, 219 F.3d 744 (8th Cir. 2000); *cert.granted*, -- US --; 121 S. Ct. 878; 148 L. Ed. 2d 788

(2001) (vacates 47 CFR 51.315(c)-(f)). Accordingly, Ameritech argues, it has no obligation to combine elements that are not currently combined, even if they are “ordinarily combined” in its network. See 47 CFR 51.315(c). Since provisioning of new and additional lines, by definition, requires Ameritech to combine elements not currently combined, Ameritech argues that it is not required by law to offer UNE-P or ULS-ST -- both of which are combinations of elements -- to CLECs wishing to serve customers requesting new service or additional lines. See, e.g., Ameritech Ex. 3.1 at 2, *et seq.* Instead, Ameritech asserts that it is only required to provide them in a manner that permits a requesting CLEC to combine the elements itself. Ameritech Ex. 3.1 at 3. In practice, this means that a CLEC wishing to provide service using UNEs to a new customer or a customer requesting a second line will be compelled to purchase collocation space, contract with vendors for tie cables, use more cross-connections than Ameritech’s own configuration, and install cross-connections to its own distribution frame. Staff Ex. 1.0 at 21.

Ameritech advances no policy or economic arguments in support of its position. In fact, Ameritech’s only argument is that *federal* law does not require it to combine elements that are not currently combined for CLECs. See, *generally*, Ameritech Ex. 3.1.

This argument is, however, defective for a number of reasons. First, the Illinois General Assembly has spoken to this issue. Section 13-801(d)(3) of the Public Utilities Act, enacted June 28, 2001, provides in relevant part, that:

Upon request, **an incumbent local exchange carrier shall combine any sequence of unbundled network elements that it ordinarily combines**

for itself, including but not limited to, unbundled network elements identified in The Draft of the Proposed Ameritech Illinois 271 Amendment (I2A) found in Schedule SJA-4 attached to Exhibit 3.1 filed by Illinois Bell Telephone Company on or about March 28, 2001 with the Illinois Commerce Commission under Illinois Commerce Commission Docket Number 00-0700. The Commission shall determine those network elements the incumbent local exchange carrier ordinarily combines for it if there is a dispute between the incumbent local exchange carrier and the requesting telecommunications carrier under this subdivision of this Section of this Act.

220 ILCS 5/13-801(d)(3) (emphasis added).

Ameritech cannot, therefore, argue that the Eight Circuit's action in vacating 47 CFR 51.315(c) aids its cause¹¹. It must combine for requesting CLECs any sequence of elements it ordinarily combines for itself as a matter of state law. Nor is Ameritech's obligation limited to those elements identified in Ameritech Ex. 3.1, Schedule SJA-4; the statute clearly requires the company to combine all elements "ordinarily combined" in its network, including – *but not limited to* – those elements. 220 ILCS 5/13-801(d)(3).

Ameritech cannot argue – at least in good faith – that it does not "ordinarily combine" all of the elements used to provide POTS service to new and second lines. Accordingly, state law – on its face – requires Ameritech to combine elements for CLECs.

Ameritech perhaps believes that Section 13-801(d)(3) is preempted by federal law, and may attempt to pursue that argument in this proceeding. However, while Ameritech can make any federal preemption argument it cares to make regarding its obligation to combine elements it ordinarily combines, the

¹¹ It should be noted that the validity of Rule 315(c) is one of the issues upon which the Supreme Court granted *certiorari*, and will hear. Iowa Utilities Board v. FCC, -- US --; 121 S. Ct.

passage of PA 92-22 by the General Assembly prevents it from making such arguments before the Commission. As Ameritech will doubtless agree – having often argued as much – the Commission is a creature of state law, and bound by the acts of the General Assembly. The General Assembly has spoken to the issue of UNE combinations, and the Commission must adhere to this pronouncement.

Of course, to the extent that Ameritech believes that the General Assembly has acted in a manner that is preempted by federal law, it has a remedy available to it. Specifically, Ameritech may petition the FCC under Section 253(d) of the Telecommunications Act of 1996, to preempt Section 13-801(d)(3), on the grounds that it violates, or is inconsistent with, the federal Act. 47 USC 253(d).

However, Ameritech cannot hope to successfully raise a preemption argument here. The Illinois Commerce Commission has no authority to declare an Act of the Illinois General Assembly preempted. Accordingly, the Commission must reject Ameritech's argument that federal law does not require it to combine UNEs for CLECs.

In addition to being unlawful, Ameritech's position is extremely poor public policy, economically unsound, and profoundly detrimental to competition. It is clear that a substantial portion of potential CLEC customers consists of persons or businesses seeking new service, relocation of existing service, or second lines. Staff Ex. 1.0 at 20, 24; see *also* AT&T/PACE Ex. 1.0 at 31 (16% of residential customers and 21% of business customers relocate each year);

878; 148 L. Ed. 2d 788 (2001).

WorldCom Ex. 1.0 at 4, 5 (Ameritech enjoyed a 3.4% increase in access lines in service in 1998; likewise, SBC experienced 3.1% growth in access lines in 2000). While it is easy to see why Ameritech does not wish CLECs to have a chance to compete on anything like equal terms in this substantial market, such an impediment to competition is *not* what the Congress intended in enacting the Telecommunications Act of 1996, or what the General Assembly intended in enacting PA 92-22. Both statutes clearly articulate a policy of fostering competition. See, e.g., 47 USC *et. seq*; 220 ILCS 5/13-101, 13-102 (statements of legislative intent that competition be fostered).

To be sure, Ameritech's refusal to provide UNE-P to CLECs for serving new customers or second lines does not absolutely prevent CLECs from serving such customers. However, it does effectively prevent CLECs from using UNEs to serve such customers, by needlessly imposing substantial costs upon the provisioning of UNEs. AT&T/PACE Ex. 1.0 at 35-36. For example, collocation at every Ameritech Illinois central office would cost a CLEC over \$8 million¹². Staff Ex. 1.0 at 22. In addition, a CLEC would have to provision tie-cables and its own frame, as well as terminations on the frame. Staff Ex. 1.0 at 22. On top of all this, the CLEC would pay for two cross-connection jumpers on the MDF. *Id.* Moreover, Ameritech would likely profit by carrying out much of this work. AT&T/PACE Ex. No. 1.0 at 35. In addition, provisioning service in this manner would increase the likelihood of failure and decrease service quality. Staff Ex. 1.0 at 23; AT&T/PACE Ex. No. 1.0 at 35; WorldCom Ex. 1.0 at 9.

¹² This assumes that collocation space is available; space is not available in 21 Ameritech central offices. WorldCom Ex. 1.1 at 9.

It is clearly ludicrous to require CLECs to take all of these steps. In effect, CLECs are being asked to incur a series of substantial, and completely unnecessary costs, which they must pay to their chief competitor, to provide customers with inferior service in a hideously complicated manner. This makes no economic or practical sense. Indeed, Ameritech's proposal is even detrimental to certain of its own interests. The company has complained in prior dockets that it is faced with exhaustion of space on its main distribution frames; its proposal here would exacerbate that problem. Staff Ex. 1.0 at 23.

Other Commissions in Ameritech states recognize the absurdity of this requirement. The Wisconsin, Indiana and Michigan commissions all require Ameritech to provide CLECs with UNE-P to serve new and additional lines. WorldCom Ex. 1.0 at 6. Indeed, SBC recognizes that UNE-P is the most effective way to serve new and additional lines. Its competitive affiliate, SBC Telecom, uses UNE-P to serve new and additional lines in New York, Pennsylvania and Georgia. Staff Ex. 1.0 at 20; 5.0 at 8; WorldCom Ex. 1.0 at 7. This demonstrates the poverty – not to mention the insincerity – of Ameritech's position.

D. Other Issues

1. The Commission should require Ameritech to provide transiting

Ameritech contends that, although it voluntarily provides transiting, AT&T / CoreComm Ex. 1.0 at 28, it is not legally obligated to do so as a part of shared transport. Ameritech Ex. 1.1 at 13-14 (Hampton). Ameritech's positioning,

however, is not correct, and the Commission should order Ameritech to provide transiting as a part of its shared transport offering.

It is difficult to determine precisely how Ameritech reached the conclusion that it is under no obligation to provide transiting with its shared transport offering. In 1996, the Commission ordered Ameritech to provide transiting, concluding that:

Ameritech Illinois' positions, particularly as expressed in its Brief on Exceptions, are inconsistent with prior Commission Orders, including our discussion of the transiting issue in Docket 96 AB-006¹³. We note that in this proceeding Ameritech Illinois witness O'Brien expressed Ameritech Illinois' commitment to include a transiting feature in its End Office Integration Tariff, which would describe the features, terms and conditions as well as prices for the service. We direct Ameritech Illinois to include transiting language in its compliance tariff and provide supporting cost studies.

TELRIC Order at 106-7 (citations omitted).

Likewise, in its Order approving the SBC / Ameritech Merger, the FCC ordered Ameritech to provide transiting, stating as follows:

SBC/Ameritech shall not require use of dedicated transport or customized routing to complete all calls using local switching and shared transport. SBC/Ameritech shall make available a modified version of transiting that does not require a dedicated end office integration ("EOI") transit trunk. No later than the Merger Closing Date, SBC/Ameritech shall withdraw Ameritech's proposal for the Commission to establish a separate transit service rate to be charged in conjunction with shared transport (as described in Ameritech's March 25, 1999, ex parte filing in CC Docket No. 96-98). (FCC SBC/Ameritech Merger Order, FCC 99-279, ¶ 55(a) of Appendix C.)

¹³ The Commission ordered Ameritech to provide transiting in ICC Docket 96 AB 006, an arbitration between WorldCom (then MCI) and Ameritech. See Final Order at 19, ICC Docket No. 96 AB 006 (December 17, 1996).

It is clear, therefore, that the Commission need not consider Ameritech's claim that it is under no obligation to provide transiting. Both the Commission and FCC have clearly directed it to do so. The Commission should not depart from its ruling in the TELRIC Order.

2. *The Commission should not adopt Ameritech's Draft Illinois Section 271 interconnection agreement amendment*

Ameritech appears to recognize that its position regarding the combination of currently uncombined elements, if not absurd, appears at least to be unreasonable. Accordingly, it proposes to provide certain new combinations of network elements under a Draft Illinois Section 271 interconnection agreement amendment, which the company professes itself:

willing to offer ... to CLECs in Illinois upon obtaining Commission approval that [the] amendment meets the combination requirements for the 271 checklist approval and upon obtaining commission [sic] assurance that Ameritech's interconnection arrangements in Illinois fully satisfy 271 checklist requirements for wholesale products in Illinois[.]

Ameritech Ex. 3.1 at 1-2.

Ameritech's attempt to propose a marginally more reasonable solution – in exchange, it must be noted, for Section 271 approval on these issues – is, regrettably, far from adequate.

First, as shown above, Ameritech must, as a matter of state law, combine for a requesting CLEC “any sequence of unbundled network elements that it ordinarily combines for itself[.]” 220 ILCS 5/13-801(d)(3). To the extent that

Ameritech's "voluntary offering" affords CLECs fewer rights than they have under state law, the Commission should reject the "voluntary offering" out of hand.

A cursory review of Ameritech's offering reveals that it falls well short of even complying with state law. First, Ameritech proposes that the offering will "sunset" and cease to be offered at the end of four years at most --- or eighteen months, if Ameritech fails to obtain 271 approval in Illinois. Ameritech Ex. 3.1, Schedule SJA-4 at 15. Second, Ameritech proposes that provisioning of UNE-P at TELRIC be limited to two years for business customers, and three years for residential customers¹⁴. Third, Ameritech proposes that CLECs pay "market-based" rates for non-recurring charges, which are not based upon TELRIC. Ameritech Ex. 3.1 at 28. Ameritech reasons that, since, in its opinion, it is not legally obligated to perform the work associated with these nonrecurring charges, it is permitted to charge rates that are not based on TELRIC. Id.

In exchange for this munificent offer, Ameritech expects "Commission approval that this amendment meets the combination requirements for the 271 checklist approval and ... commission [sic] assurance that Ameritech's interconnection arrangements in Illinois fully satisfy 271 checklist requirements for wholesale products in Illinois, subject only to the pending third-party OSS test and performance measurement." Ameritech Ex. 3.1 at 7-8. It further expects that CLECs will waive significant rights in exchange for the amendment. Ameritech Ex. 3.1, Schedule SJA-4 at 16-17; see *a/so* WorldCom Ex. 1.1 at 10 (asserting that the waiver provision in the amendment is overbroad).

¹⁴ Or, indeed, less, if there is a change in federal law. Ameritech Ex. 3.1, Schedule SJA-4 at 8, 11.

As WorldCom witness Lichtenberg aptly puts it, the amendment is a “non-starter.” See WorldCom Ex. 1.1 at 8. Its deficiencies are numerous. First, it proposes to offer CLECs less than they are entitled to as a matter of state law. For as long as Section 13-801(d)(3) remains in effect, CLECs are entitled to request that Ameritech combine for them all elements that it ordinarily combines for itself, whether or not they are currently combined; the amendment seeks to limit this obligation to somewhere between eighteen months and four years. CLECs are entitled to pay TELRIC rates for UNEs; the amendment seeks to limit this obligation to three years for residential customers, and two years for more lucrative business customers. CLECs are entitled to pay TELRIC rates for non-recurring charges; the amendment seeks to impose “market rates”, whatever those might be. Finally, as if this were not enough, Ameritech expects pre-approval of its 271 application as a result of this offering.

In the 12A amendment, Ameritech “offers” less than it is required by state law to offer, and accordingly the Commission cannot approve the amendment. Moreover, Ameritech grossly overreaches when it seeks pre-approval of an as-yet nonexistent Section 271 application on the strength of the amendment. It is, at the very least, presumptuous for Ameritech to propose that the Commission should find that the offering – which does not even satisfy the requirements of the Public Utilities Act -- is conclusive evidence of the company satisfying its obligation to open its markets to competition. Accordingly, the Commission must summarily reject the amendment.

3. Proposed tariffs

As noted above, Ameritech has, with respect to ULS-ST, succeeded in putting off the day of reckoning for five years. Likewise, Ameritech has, for the same period, successfully refused to supply UNE-P in an acceptable form, notwithstanding its obligation to do so. This refusal to comply with existing requirements has, without question, adversely affected the development of competition in Illinois. See AT&T/PACE Ex. 1.0 at 9 (growth of competitive markets in other states largely results from competitors employing UNE-P).

It is now time to bring Ameritech to book with respect to UNE-P and ULS-ST. The Staff recommends that the Commission do so by imposing a tariff that incorporates the requirements of the various Orders and rules that Ameritech has, to date, ignored or flouted.

As a threshold matter, the Commission can, without question, lawfully impose such a tariff. While there is a compelling argument to be made that the Commission has *a/ways* possessed such authority under Section 9-201 of the Public Utilities Act, see 220 ILCS 5/9-201, this argument need not be made. On June 28, Governor Ryan signed House Bill 2900, and various Senate amendments thereto into law as Public Act 92-22. See PA 92-22 (92nd General Assembly). This Act, which took effect June 30, 2001, see Section 99, PA 92-22, adds a new Section 13-801 to the Public Utilities Act, and amends existing Section 13-501. 220 ILCS 5/13-501, 13-801. Subsection (g) of Section 13-801 provides that “[w]hen cost based rates have not been established ... after the Commission's own motion, the Commission shall provide for interim rates that

shall remain in full force and effect until the cost based rate determination is made, or the interim rate is modified, by the Commission.” 220 ILCS 5/13-801(g).

Likewise, the amendments to Section 13-501 provide:

After a hearing, the Commission has the discretion to impose an interim or permanent tariff on a telecommunications carrier as part of the order in the case. When a tariff is imposed as part of the order in a case, the tariff shall remain in full force and effect until a compliance tariff, or superseding tariff, is filed by the telecommunications carrier and, after notice to the parties in the case and after a compliance hearing is held, is found by the Commission to be in compliance with the Commission's order.

220 ILCS 5/13-501(b)

The import of this is clear. To the extent that a carrier fails to file rates that are lawful and otherwise comply with Commission orders, the Commission can impose them, on both an interim and permanent basis. Accordingly, the Commission has the full authority to impose such a tariff in this proceeding.

The Commission should impose a tariff in this case, in light of Ameritech's refusal, over an extended period, to file tariffs consistent with its legal obligations. Staff Ex. 1.0 at 12. There are several advantages to such action. First, CLECs will be able to purchase from the tariff immediately, instead of waiting for Ameritech to file a compliance tariff that, if history is any guide, will no more comply with the Commission's order than the previous one. Second, all parties – including Ameritech – will be assured of certainty as to the terms and conditions of service that it is required to offer, which will foster coherent business planning. Third, Commission resources will be preserved, as the Commission will not be compelled to review yet another Ameritech UNE-P / ULS-ST tariff, unless the company persists in its refusal to file a tariff that fully

complies with all relevant Orders. This is much less likely if a Commission-imposed tariff goes into effect; as the company will then have a strong incentive to file a compliance tariff that actually demonstrates an acceptable level of compliance. Fourth, to the extent that tariff language exists, CLECs will have specific rights that they can enforce under the Section 13-514 complaint process. See 220 ILCS 5/13-514.

Moreover, it is Staff's understanding that interested parties plan to submit their own preferred tariff provisions, Staff Ex.1.0 at 13, which several parties already have done. See AT&T/ PACE Ex. 2.2; WorldCom Ex 1.1 at Schedule SL-5. Staff expects to comment on any proposed tariff in its Reply Brief on Exceptions should the Commission elect to impose an interim tariff, it could easily incorporate some or all of the tariff provisions advanced by Staff or other parties into existing Ameritech tariffs. Staff Ex. 1.0 at 24-27. Similarly, the Commission is fully authorized to impose its own terms and conditions.

VI. CONCLUSION:

WHEREFORE, for all of the foregoing reasons, we request the Administrative Law Judge accept Staff's recommendations in their entirety as set forth herein.

Respectfully Submitted:
Staff of the Illinois Commerce
Commission
BY: _____
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Dated: AUGUST 30, 2001